STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY	)	
d/b/a Ameren Illinois,	)	
Petitioner	)	**Docket No. 13-0301**
	)	
Rate MAP-P Modernization Action Plan -	)	
Pricing Annual Update Filing	)	

REPLY BRIEF OF AMEREN ILLINOIS COMPANY

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1. Cash Working Capital

a. Pass Through Taxes

Staff, the AG and CUB continue to recommend that the Commission calculate the lead days for pass-through taxes, not according to the number of days AIC has access to the funds associated with the pass-through taxes at issue, but according to the number of days AIC theoretically *could* have access to the funds. AIC's actual practice should determine the lead days, as explained in its initial brief. (AIC Init. Br. 5.)

Staff, the AG and CUB all support adoption of the same number of lead days: 38.54 days for the EAC, and 48.54 days for the MUT. (*See* AG Init. Br. 11.) Each of the parties argues that its position accords with previous Commission directives on the issue, specifically in Dockets 12-0001 and 12-0293. (AG Init. Br. 13; CUB Init. Br. 3; Staff Init. Br. 7.) The arguments set forth by Staff, the AG and CUB in this proceeding, however, seem to conflate the concepts of revenue lag and expense lead, and as a result, mischaracterize the Commission's findings in the

previous cases.[1] For example, the AG attempts to compare its position on the issue to AIC's, arguing that its witness "recognize[d] that AIC is not obligated to provide the MUT or EAC to the municipality or to the state until after it has actually received the funds from customers"—an argument in support of a zero-day revenue lag. (AG Init. Br. 11.) AIC does not dispute that revenue lag for pass-through taxes should be zero. In its next sentence, the AG notes that, "by contrast," AIC's witness "recommends that the lead lag study reflect an earlier than necessary payment of these costs." (*Id.*) This statement refers to the expense lead applicable to the pass-through taxes—the issue here.

This failure to clearly distinguish revenue lag from expense lead extends to the AG and Staff's reliance on Dockets 12-0001 and 12-0293. The AG states repeatedly in its initial brief that the Commission concluded in Dockets 12-0001 and 12-0293 that "it would not increase the cash working capital balance due to a utility practice of paying taxes and fees sooner than required by law." (AG Init. Br. 13.) Staff makes a similar statement in its initial brief, arguing that, "[i]n both dockets, the Commission correctly adopted EAC and MUT lead days based on when the pass-through taxes were actually due; not when remitted by AIC." (Staff Init. Br. 7.) The Commission did not make these findings.

Although Dockets 12-0001 and 12-0293 did address the cash working capital associated with pass-through taxes, the Commission's conclusions in those cases were limited to the issue of the appropriate *revenue lag* for the taxes. *Ameren Ill. Co*., Docket 12-0001, Order, p. 14 (Sept. 19, 2012); *Ameren Ill. Co.*, Docket 12-0293, Order, p. 38 (Dec. 5, 2012). The parties in Dockets 12-0001 and 12-0293 advanced the argument that the additional 30 days that AIC could

[1] As discussed in AIC's initial brief, the term "revenue lag" refers to periods of time between when AIC incurs a cash outlay for provision of service, and when it receives payments for that service from customers. (ICC Staff Ex. 2.0, p. 6.) Conversely, the term "expense lead" refers to the period of time between when AIC receives cash from its customers, and when it uses that cash to makes payments in satisfaction of its obligations. (*Id.*)

theoretically hold the funds associated with pass-through taxes should be imputed for cash working capital purposes. But the Commission's conclusions in each case did not adopt this rationale. Instead, the Commission determined to adopt a revenue lag of zero, based on the fact that AIC does not incur a cash outlay for pass-through taxes until after it receives the funds to cover the expense. *Ameren Ill. Co*., Docket 12-0001, Order, p. 14 ("the appropriate *revenue lag* days for this issue should be zero") (emphasis added); *Ameren Ill. Co.*, Docket 12-0293, Order, p. 38 (deciding to "adopt the use of zero *lag days* for pass-through taxes") (emphasis added). In other words, the Commission's decisions were based solely on the revenue lag—the days prior to AIC's receipt of funds from its customers. The Commission did not make any express findings concerning the *expense lead*, which is the element of the lead-lag study at issue in this case.

In Docket 11-0282, the Commission was presented with the question of "whether the additional month that AIC could hold the funds should be imputed for CWC purposes"—that is, what is the appropriate expense lead? *Ameren Ill. Co.*, Docket 11-0282, Order, p. 14 (Jan. 10, 2012). The Commission concluded that the adjustment to impute the additional month was unwarranted. *Id.*

AIC's proposal in this case properly accounts for the Commission's decisions in Dockets 12-0001 and 12-0293, because it reflects a zero-day revenue lag. (Ameren Ex. 15.0 (Heintz Reb.), p. 5.) Importantly, however, AIC's proposal also reflects the appropriate expense leads—those that account for the actual number of days the funds associated with the pass-through taxes are held by AIC. *Ameren Ill. Co*., Docket 11-0282, Order p. 14; *see also* (Ameren Ex. 15.0, p. 5). In other words, AIC's proposed lead days in this case represent AIC's lead day proposals from Dockets 12-0001 and 12-0293, after subtracting the 30-day revenue lag in accordance with the Commission's determination that the "revenue lag days for this issue should be zero." *Ameren Ill. Co.*, Docket 12-0293, Order, p. 38. The proposals advanced by Staff, the AG and

CUB in this case, however, tack an *additional* 30 days onto the lead time for pass-through taxes, representing the additional 30 days AIC theoretically could hold the funds used to pay the taxes. These post-receipt days were *not* the subject of previous Commission decisions on this issue.

The AG makes an additional argument in its initial brief that the absence of an audit specifically finding AIC's remittance practices to be "prudent" calls into question the propriety of the practices. (AG Init. Br. 14-15.) Contrary to the AG's implication, the fact remains that AIC's pass-through taxes have been audited, and have never been found improper. (Tr. 98:16-22.) In fact, "none of the taxing authorities have ever questioned the amount of the tax or the process for determining the amount of the tax." (*Id.*) In addition, no party has produced any evidence whatsoever to demonstrate that AIC's practices are improper. The AG's position is based entirely upon conjecture, and ignores substantial record evidence demonstrating that AIC's remittance practices are prudent from a taxation perspective.

Finally, the AG argues that AIC's assertion that it would likely alter its remittance practices if the Commission adopts the proposal set forth by Staff and the AG, thereby incurring some level of incremental expense, "fails" because AIC witness Mr. Heintz did not quantify the amount of the incremental expense or explain why AIC had not already altered its remittance practices. (AG Init. Br. 16.) Mr. Heintz did not quantify the amount of the expense because the amount is not yet known. (Ameren Ex. 23.0 (Heintz Sur.), p. 4.) However, AIC has committed to track the expenses associated with any required modifications in order to present the Commission with a reasonable, fact-based amount in its next electric formula rate case. (*Id.*) Notably, neither the AG nor any other party has disputed the fact that changes to AIC's remittance schedule will require time and expense. Similarly, no party has disputed that if AIC is required by the Commission to alter its cash working capital calculation, the reasonable and prudently-incurred expense associated with that alteration and the consequent changes in AIC's

remittance practices will be properly recoverable in the rates established in AIC's next electric formula rate proceeding. (AIC Init. Br. 7-8.) Thus, it is undisputed that if the Commission determines to adopt the adjusted, imputed pass-through tax lead days, the Commission should also clearly articulate in its final order that all reasonable and prudently-incurred incremental costs associated with modification of the current remittance practices should be included in and recovered via the rates established in AIC's next electric formula rate proceeding.

b. Income Tax Expense Lead Days

AIC and Staff continue to agree that AIC's cash working capital associated with income tax expense should be calculated using statutory tax rates and payment dates, and combining current income taxes with deferred taxes. (AIC Init. Br. 8; Staff Init. Br. 7.) The AG, on the other hand, would have the Commission set the revenue lag and expense lead days for income taxes at zero, because the AG asserts AIC did not actually pay taxes in 2012. (AG Init. Br. 18.)

The AG's proposal is contrary to longstanding Commission practice, and has been consistently rejected by the Commission in favor of the approach proposed by AIC and Staff. *Ameren Ill. Co.*, Docket 12-0293, Order, pp. 45-46 ("The Commission agrees that it has a long-standing practice of not considering current and deferred income taxes separately."); *Ameren Ill. Co.*, Docket 12-0001, Order, p. 29; *see also* ICC Staff Ex. 7.0, p. 9 (noting that the same method was applied by AIC and approved by the Commission in Docket Nos. 11-0282, 09-0306 *et al.* (cons.), and 07-0585 *et al*. (cons.)). The AG ignores this significant precedent, arguing instead that the Commission should impose the calculation used by Commonwealth Edison on AIC. The AG argued that "ComEd properly reflects its actual tax payment in its cash working capital." (AG Init. Br. 19.) However, the Commission specifically rejected this argument in AIC's most recent electric formula rate case, noting that "ComEd and AIC calculate income taxes using different methodologies," and noting that, "should those methodologies align in the future, or

new evidence be presented, [it would] re-visit the issue in future proceedings." *Ameren Ill. Co.*, Docket 12-0293, Order, pp. 44-46. No party has offered evidence in this proceeding to show that AIC's method has now changed to align with ComEd's. On the contrary, the record evidence indicates that AIC, unlike ComEd, calculates its income tax expense based on statutory tax rates and due dates. (Ameren Ex. 15.0, p. 16.) This method maintains consistent treatment of income taxes across the revenue requirement calculation. (Id.) There is no evidence in this proceeding that ComEd's calculation method would be appropriate for AIC. Therefore, the AG's adjustment should be rejected as unsupported.

The AG's proposal also requires an alteration to the formula rate template, as the AG acknowledges in its initial brief. (AG Init. Br. 18, n. 14.) The issue is therefore also in Dockets 13-0501/130517 (cons.)

2. Accrued Vacation Reserve

Both Staff and the AG maintain their proposal to deduct AIC's accrued vacation reserve net of ADIT from the rate base, based on the faulty assumption that accrued vacation expense is similar to other operating reserves. (AG Init. Br. 20-22; AG Ex. 2.0, p. 7-8, Sch. DJE-1; Staff Init. Br. 8-9; ICC Staff Ex. 2.0, p. 12, Sch. 2.03.) But neither Staff nor the AG has addressed the fundamental differences existing between operating reserves, which are properly deducted from rate base, and accrued vacation reserves, which are not.

Instead, Staff and the AG focus on the lag that creates the accrual. (AG Init. Br. 20; Staff Init. Br. 8.) This lag occurs because of an accounting convention requiring that AIC record vacation time as it is earned but not pay it until it is taken in the subsequent year. (AIC Init. Br. 10; Ameren Ex. 9.0 (Rev.) (Stafford Reb.), p. 45.) Focus on this lag, however, ignores the more important lag: the time between when AIC pays for the expense and when much later the expense is recovered from ratepayers. Table 1 of Mr. Stafford's rebuttal testimony illustrates

clearly this delay in AIC's recovery of vacation pay expense, with vacation accruals made in 2012, paid by the Company in 2013, and not reimbursed by ratepayers until 2014. (AIC Init. Br. 10; Ameren Ex. 9.0 (Rev.), p. 47.) Therefore, unlike other operating reserves that are deducted from rate base because ratepayers funded the expense *before* it was paid, ratepayers here reimburse AIC for an expense it has *already* paid. (AIC Init. Br. 10.) In short, this expense is fundamentally different than other operating reserves.

Ignoring this timing delay in AIC's expense recovery, both the AG and Staff focus on balances of accrued vacation pay on the company's books. (AG Init. Br. 21; AG Ex. 4.0 p. 3; Staff Init. Br. 8.) Similarly, a prior Commission Order concluded that "accrued vacation pay [was] a continuing, permanent balance." *Ameren Ill. Co.*, Docket 12-0293, Order, pp. 12-13. But in focusing on the mere existence of this balance, these parties and the Commission lose sight of what that balance represents: time owed to employees, not dollars. (AIC Init. Br. 10; Ameren Ex. 9.0 (Rev.), p. 44.) This balance is not a cash reserve that AIC can access to fund its operations. It does not represent a source of working capital. (AIC Init. Br. 10; Ameren Ex. 18.0 (2d Rev.) (Stafford Sur.), p. 15.)

For this reason, Staff and the AG's reliance on prior Commission Orders is misplaced. (AG Init. Br. 21-22; Staff Init. Br. 8-9.)[2] None of the Orders acknowledged that this type of accrued expense is not "funds" or that AIC is not compensated for this expense item ahead of time. (AIC Init. Br. 10-12.) The Orders should be revisited in this case.

The proposed adjustment would withhold funds from AIC for expenses it has already paid. (AIC Init. Br. 12.) This is improper ratemaking and it should be rejected.

[2] Staff cites *Commonwealth Edison Co.,* Docket 11-0721, Order, p. 70 (May 29, 2012); in addition to *Ameren Ill. Co.*, Docket 12-0001, Order, p. 59; *Ameren Ill. Co.*, Docket 12-0293, Order, pp. 12-13, which are cited by both Staff and the AG.

3. ADIT for Metro East Transfer

In its initial brief, AIC explained the fundamental problem with the $5.62 million Metro East transfer adjustment proposed by Staff and AG/CUB. (*See* AIC Init. Br. 12-17.) The adjustment consists of accumulated deferred income taxes (ADIT) that had accrued on Union Electric's books before the transfer of the Metro East assets to CIPS. Unlike the assets, however, the associated ADIT balance was not transferred to CIPS. This was proper accounting, which no one questions. But ADIT reduces rate base. Thus, despite the fact it would violate accounting rules, Staff and AG/CUB ask the Commission to add the vintage, Union Electric ADIT to AIC's current books.

But as AIC pointed out, both in testimony and in its initial brief, this proposed adjustment simply ignores the fact that after the transfer, ADIT on these assets started accruing on AIC's books—and hence reducing rate base—*all over again*. So contrary to Staff and AG/CUB, the transfer's ADIT effects were to customers' benefit; the transfer essentially extended the rate-base reducing effect of ADIT. And consequently, accepting Staff and AG/CUB's adjustment would be double-counting ADIT. Under their adjustment, the vintage, Union Electric ADIT would be counted once, and then the newly accruing ADIT on AIC's books would be counted again. Thus, the Metro East transfer adjustment would not eliminate an inequity, but cause one.

None of the three parties who filed briefs on this question—Staff, the AG, and CUB—avoids this conclusion. Indeed, none seriously addresses it. Although three briefs were presented in support of the adjustment, only one of them even attempts to respond to the double-counting problem identified by AIC.

Neither Staff nor CUB Acknowledge the Critical Issue Raised by AIC on the Record.

Staff and CUB's briefs may be addressed fairly quickly. Neither even *acknowledges* the double-counting problems that were explained by Mr. Stafford in his surrebuttal testimony. (*See*

Staff Init. Br. 9-10; CUB Init. Br. 7-8.) Rather than refute or even question Mr. Stafford's testimony, Staff and CUB again set forth the conclusory assertion that following the proper accounting rules "is obviously an inequitable result for ratepayers." (CUB Init. Br. 8; *see also* Staff Init. Br. 10 (asserting that "ratemaking inequity . . . is the basis of Staff and AG/CUB's adjustment").)

But, again, Mr. Stafford's surrebuttal testimony clearly articulated the serious problems with the adjustment—he showed that if one takes into account the entire net ADIT effect, there is no "ratemaking inequity" but a ratemaking *benefit* to ratepayers. Staff and CUB had full notice of his testimony, and they have simply ignored the problems he described. Ironically, Staff asserts that AIC "fail[s] to address the unreasonable effect of the ratemaking inequity." (Staff Init. Br. 10.) That is nonsense—AIC provided a full response in surrebuttal that was subject to, but not challenged on, cross-examination.

The AG Offers No Meritorious Reason to Adopt the Adjustment.

Before addressing the AG's response to Mr. Stafford, AIC would note that the AG continues to present a one-sided view of the ADIT situation. It repeatedly asserts that ratepayers have been harmed because the vintage ADIT was not counted on AIC's books: the AG says that this "depriv[es] Illinois ratepayers of the ADIT benefit that had accumulated on the plant during its ownership by UE" (AG Init. Br. 23), that "ratepayers lost the ADIT benefit formerly associated with the Metro East plant" (*id*. at 24), and that it "depriv[es] consumers of the benefit of the deferred tax adjustment" (*id*.).

Again, AIC acknowledged that Union Electric's ADIT did not follow the assets to AIC's books. That was proper accounting, and it reflected the reality that ADIT would begin accruing again post-transfer. There was a *temporary* increase in rate base, but it would not and did not last. (*See* AIC Init. Br. 14-15.) So it is false to say that "ratepayers lost the ADIT benefit." (AG

Init. Br. 24.) The benefit simply started accruing all over again. Counting the Union Electric ADIT *in addition to* this newly accruing ADIT would be obviously double-counting the ADIT.

The AG Does Not Offer a Serious Response to the Double-Counting Problem.

As stated, the AG does at least acknowledge the double-counting issue. It acknowledges Mr. Stafford's explanation that "a full amount of ADIT will eventually accrue on the Metro East assets and will be deducted from AIC's rate base" and "that to also include the ADIT that was recorded on Union Electric's books just before the transfer would comprise 'double counting.'" (AG Init. Br. 26.)

Note well: *the AG does not question whether Mr. Stafford's double-counting explanation is true.* It offers only a single sentence in response: "However, money has a time value . . . and Illinois ratepayers should receive that benefit sooner rather than later." (*Id*.) However, this conclusion is flawed.

The AG's Response is Conclusory and Undeveloped and Should Be Disregarded.

First, as an argument, the AG's response is so little developed, so conclusory, and so lacking in authoritative support that it should be considered waived. Why is it that ratepayers should receive "that benefit sooner than later"? The AG offers no explanation. Why, besides the mere desirability of result to the AG, should proper accounting conventions be ignored in this case? The AG gives no principled reason. What law, regulation, case, or accounting rule dictates this outcome? The AG cites nothing. The AG has the burden of supporting its own arguments, and this lack of support is grounds for rejecting it. *See, e.g.*, *Ill. Bell Tel. Co.*, Docket No. 05-0231, 2005 Ill. PUC LEXIS 372, Order at *86 (June 29, 2005) (rejecting argument and "find[ing] that the conclusory arguments that CUB/AG would derive [from a certain report], fail to consider, dispute or address all of the pertinent factors and dynamics that are required for a reasoned analysis in these premises").

The AG's Argument is Overbroad and Implausible.

The AG's position is also implausible. The Commission constantly deals in accounting, and it knows full well that many, many business events have their impact spread out and recognized across multiple periods. That is the whole reason that ADIT even exists, to recognize that depreciation is counted differently across different periods for book and tax purposes. And in fact, when the Metro East gas assets were transferred, the Commission specifically reviewed and approved identical-in-principle journal entries associated with the transfer and specifically found that "neither the ratepayers of AmerenUE nor of AmerenCIPS are likely to be adversely affected . . . ." *In re Cent. Ill. Pub. Serv. Co.*, Docket 03-0657, Order, pp. 17, 20, (Sept. 22, 2004).

It is not proper regulatory accounting to assert, without authority, that an item should be front-loaded and fully recognized in a single period simply because it would benefit ratepayers. The question is not whether an adjustment would put more money in customers' pockets—if that were the test, every adjustment would be adopted. The question is whether the accounting was proper, and no one has suggested that it was not. Pointing to the time value of money does not add anything.

The AG's Argument Continues to Ignore the "Benefit" of Newly Accruing ADIT on AIC's Books.

Finally, the AG continues to assert that ratepayers should receive "that benefit"—note the singular phrasing—sooner. (AG Init. Br. 26.) Again, this choice of words ignores the fact that the AG is asking for a *double dose* of ADIT to be applied to the transferred assets.

If the AG is suggesting that the Commission wants to ignore accounting rules and recognize Union Electric's vintage ADIT on AIC's books, perhaps that is its prerogative. But if it does that, it cannot also recognize the ADIT that is newly accruing on the same assets in AIC's books. It must be one or the other, not both.

The AG's Proposal to Restore Past Rate Differences to Current Ratepayers Presents Retroactive Ratemaking Problems.

As another basis for the adjustment, the AG argues that it "would restore a portion of [the vintage ADIT] benefit to Illinois ratepayers." (AG Init. Br. 23.) By this rationale, the adjustment would violate the prohibition against retroactive ratemaking. "The prohibition of retroactive ratemaking is derived from the overall scheme of the [Public Utilities] Act . . . ." *Citizens Utilities Co. v. Ill. Comm. Comm'n.*, 124 Ill. 2d 195, 207 (1988). The rule "is consistent with the prospective nature of . . . setting rates" and by "prohibit[ing] refunds when rates are too high and surcharges when rates are too low, it serves to introduce stability into the ratemaking process." *Id*.

In *Citizens Utilities*, the Commission had adopted a $4.2 million rate-base reduction that was, like here, related to a past accrued "balance of deferred income taxes." *Id*. at 199. The Illinois Supreme Court affirmed the appellate court's reversal of this deduction. The Court held that "the real effect, whether intended or not, of the $4.2 million reduction in Citizens' rate base is to deny retroactively the tax benefits the Commission permitted the company to enjoy during [a past period]." *Id*. at 206-07. This "clearly conflict[ed] with fundamental principles of ratemaking in Illinois." *Id*. at 207.

The Court recognized that ADIT can be considered "customer-supplied funds," *id*. at 212, but this did not avoid the conclusion that "there can be no retroactive adjustment in this case simply because the Commission has now decided to treat the tax benefits differently [than in a prior order]." *Id*. at 211. In sum, the Court found that "in reducing Citizens' rate base, the Commission has attempted to correct what it now perceives as errors in the past rate orders." *Id*. at 213. This violated the rule against retroactive ratemaking, so the Court affirmed the reversal of the rate-base reduction. *Id*. at 213-14.

Just as in *Citizens Utilities*, the proposed adjustment here is an ADIT-related rate base

reduction designed "to correct what [Staff and AG/CUB] now perceive[] as errors" in a "past" order. *Id*. at 213. Indeed, in *Citizens Utilities*, unlike here, it was not at all clear that the challenged ADIT treatment had been correct. *See id*. at 206 (noting that the basis for the Commission's treatment of the taxes in the prior case was "not apparent from the order"). But even if there were an argument that the accounting of the Metro East transfer were improper, the proposal to "restore a portion of [the vintage ADIT] benefit to Illinois ratepayers" that was allegedly denied in a prior order (AG Init. Br. 23) runs afoul of the retroactive-ratemaking rule. Contrary to the AG's theory of the case, the purpose of this proceeding is not to fix prior rates or calculate rate base to effectively provide a refund.

The AG's adjustment seeks to redress a perceived wrong from 2005, and make ratepayers whole now for that wrong. There is no wrong; but even if there was, *Citizens Utilities* makes clear that this is not a proper basis for current ratemaking.

None of the Initial Briefs Question the Critical Facts that Require Rejecting the Adjustment.

Finally, AIC would note numerous facts in the record that have not even been questioned, much less refuted, by the parties proposing the Metro East transfer adjustment:

- That any increase in rate base associated with the Metro East transfer "is temporary." (AIC Ex. 18.0 (2d Rev.), p. 20.)
- That "tax depreciation for CIPS started over on the transferred assets as if the assets were installed and placed in service on the date of the transaction." (*Id*.)
- That the Staff and AG/CUB witnesses "miss this critical point in support of their adjustment, namely that tax depreciation starts over for the transferred assets." (*Id*.)
- That "it is likely that the ADIT deduction for the transferred assets would be greater" under AIC's proposed treatment "than if the transfer had not taken place." (*Id*., p. 22.)
- That, *without* the adjustment, Illinois ratepayers "will receive the full tax benefits" associated with ADIT "recognized as a reduction to rate base." (*Id*., p. 20.)
- That adopting the Metro East transfer adjustment would "result[] in double counting"

ADIT. (*Id*., p. 23.)

- That "double counting is not appropriate ratemaking, and should be rejected by the Commission." (*Id*., p. 25.)

These facts, then, must be considered undisputed. Indeed, as discussed in AIC's initial brief, Staff witness Mr. Ostrander agreed with many of these points on cross-examination. (*See* Tr. 394-98.) In sum, the record evidence is clear, and it points one way: the Metro East adjustment is unsupported, would be inequitable, and must be rejected.

4. OPEB Contra Liability

Staff continues to support an adjustment to remove from rate base $827,000 for the Other Post-Employment Benefits (OPEB) Contra-Liability balance, net of Accumulated Deferred Income Taxes (ADIT). (Staff Init. Br. 10.) As AIC explained, AIC has in 2012 funded more into the OPEB Trust than the accrual expense amount reflected in rates. By including this difference as an OPEB contra-liability and reflecting it in rate base, AIC earns a return on this amount and is compensated for the time value of the additional funding dollars it spent in 2012. (AIC Init. Br. 17-21.) In years where the payments into the OPEB Trust are less than the accrual expense amount, resulting in a positive OPEB Liability balance, ratepayers would be compensated for the time value of their money by deducting the amount from rate base. But when payment amounts are greater than the accrual amount, resulting in a negative, or contra, OPEB Liability balance, symmetry requires that AIC include the additional amount in rate base. (Ameren Ex. 9.0 (Rev.) (Stafford Reb.), p. 19.) This treatment is also appropriate because it allows AIC to recover its actual costs of delivery services, as required under the EIMA. 220 ILCS 16-108.5(c)(1).

Staff's brief claims "Staff found no evidence that shareholders provided funds in excess of the accrual expense amount already recovered from ratepayers." (Staff Init. Br. 10.) But the evidence is there, and it is undisputed: AIC's actual payments into the OPEB Trust well

exceeded the accrual amount of OPEB expense in 2012, which resulted in the OPEB liability in 2011 becoming a contra liability. (Ameren Ex. 9.0 (Rev.), p. 16; ICC Staff Ex. 3.01; Sch. B-2.12.) Since the accrual amount was used to set rates, the money had to come from somewhere. It came from shareholders. Otherwise, Staff's logic would lead to the conclusion that, if cost increases or other changes caused the utility to pay out expenses in excess of total revenues received from ratepayers, such payments would still be considered ratepayer-supplied funds.

Staff also argues that "ratepayers continue to be charged for OPEB expense in utility rates" and so "ratepayers have supplied the cash for the OPEB expenses through on-going utility rates." (Staff Init. Br. 10-11.) AIC does not disagree that ratepayers continue to be charged for OPEB expense in utility rates based on the accrued amount, and in fact that is exactly AIC's point. Ratepayers are charged OPEB expense based on the accrual amount; but AIC paid *more* than this into the OPEB trust in 2012. Ratepayers have "supplied cash" *up to the accrual expense amount*—the amount in rates. But they have not supplied the excess contribution amount. Thus, AIC should earn a return on this excess amount as reflected in the contra liability.

Staff also cites to the same cases it did in testimony. (Staff Init. Br. 11.) But as AIC explained, the Peoples/North Shore cases cited by Staff are inapposite. They address the treatment of pension assets, not OPEB contra-liabilities, for a gas utility, not an electric utility, under traditional ratemaking, not the formula rate law. (AIC Init. Br. 20-21.)

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In its initial brief (p. 26), AIC identified the amount of rate case expense that should be included in the revenue requirement as $1.261 million. The correct amount, shown in Appendix C to AIC's initial brief, is $1.21 million.

5. Industry Dues Expense

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B. Contested Issues

1. Miscellaneous Operating Revenues – ARES

Both the AG and CUB propose an adjustment to the Company's Miscellaneous Operating Revenues for revenue received by AIC for "vacating frequencies under Microwave Relocation Contracts." (AG Init. Br. 30; CUB Init. Br. 9.) Although they propose that these revenues be allocated between delivery services and transmission by different percentages (AG, 79.99%; CUB, 92.06%), their arguments are nonetheless similar (and relying on the same testimony of Mr. Brosch) and will be addressed together here.

The crux of the AG/CUB position is that these revenues should be allocated between delivery services and transmission because AIC cannot identify specific transmission assets associated with the revenues and because the revenues have not been credited at the FERC jurisdiction. However, the record shows that the microwave frequencies at issue were needed to transmit *transmission* data for SCADA. (Ameren Ex. 9.0 (Rev.) (Stafford Reb.), p. 38; AG Ex. 1.4, p. 4.) The AG and CUB do not really dispute that the frequencies did transmit transmission data (as their discussion of the question of whether the revenues would be credited by FERC appears to confirm)—rather, their position is that AIC has to identify specific transmission assets associated with the revenues. AIC explained that it was not possible to associate the revenues with specific transmission assets. (AG Ex. 1.4, p. 5.) But that does not render the microwave frequencies at issue in any way related to distribution service. The fact remains the frequencies were needed to transmit transmission data and so are properly considered transmission-related.

CUB and the AG believe that any revenues not expressly addressed at FERC must then be reflected in distribution rates. (AG Init. Br. 32-33.) But if the microwave frequencies are needed to transmit transmission data, they are FERC jurisdictional and must be addressed by FERC, not by the Commission. AIC intends to explore whether the appropriate revenues can be

credited to ratepayers under the formula in the Company's next FERC jurisdictional filing. (Ameren Ex. 9.0 (Rev.), p. 39.) In other words, AIC will address the question of the appropriate treatment of the revenues in the appropriate jurisdiction.

The AG and CUB appear to believe that AIC's delivery service rates must serve as a catch all for all costs and revenues not addressed to their satisfaction elsewhere—that the Commission be a jurisdiction of last resort for all revenues. However, the purpose of this proceeding is to establish electric delivery service rates, not rates applicable to all Commission or FERC jurisdictional rates and charges. The AG and CUB have not demonstrated that any of the revenues at issue are in fact related to delivery services—they just speculate they might be. (Ameren Ex. 18.0 (2d Rev.) (Stafford Sur.), p. 60.) Therefore, the revenues should be allocated 100% to transmission.

2. Relocation Expense – Loss on Sale and Payroll Uploading (Account 588)

Staff's initial brief confirms that Staff doesn't take issue with AIC providing a loss-on-sale benefit to eligible relocated employees. Staff's complaint is that such a benefit, if offered, should be borne by shareholders, not ratepayers. Staff, however, hasn't made its case to remove this cost from the formula rate revenue requirement. The standard for recovery under formula rates is whether the cost is prudently incurred, reasonable in amount, and related to delivery service. The testimony submitted and cited by Staff does not demonstrate the loss-on-sale benefits included in electric distribution expense in Account 588 are imprudent or unreasonable.

Staff describes AIC's relocation policy as "already generous" even without the "excessive" loss-on-sale benefits. (Staff Init. Br. 19.) This begs the question of what is Staff's point of comparison. Staff hasn't testified about relocation benefits offered by other Illinois utilities. Staff hasn't claimed to be an expert on compensation provided to relocated employees. Staff hasn't submitted evidence to show the loss-on-sale provision is unique to AIC. Staff hasn't

submitted evidence to show the loss-on-sale benefit produces an unreasonable total amount of benefits compared to benefits offered by other utilities. In contrast, AIC routinely compares its relocation benefits against those offered by other local employers and utilities. (AIC Init. Br. 34.) AIC's market analysis shows those peers provide benefits similar to the benefits provided to AIC employees. (*Id*.) Thus, the only party with a basis for a credible opinion on the reasonableness of the loss-on-sale benefit is AIC, not Staff.

Staff also claims it is "akin to adding insult to injury" to ask AIC customers to pay for a loss-on-sale benefit, when ratepayers "must not only contend with paying for steadily rising electric utility costs but also face losses on the sale of their homes if their economic situation requires them to move at a time of declining home values." (Staff Init. Br. 20.) This opinion—unveiled for the first time in brief—assumes the personal finances of ratepayers are relevant to whether a utility's actual cost is recoverable in formula rates. They aren't. Embedded in a utility's cost of service are hundreds of different costs that a customer may also incur. The costs of fueling AIC vehicles are included in rates, even though customers have their own cars. The costs of maintaining AIC operating centers are included in rates, even though customers have their own homes. The costs of financing debt are included in rates, even though customers likely have their own interest payments. The standard for recovery is not whether customers face a similar cost; the standard is whether it is actual, prudent and reasonable cost of delivery service.

Finally, Staff argues, "no evidence was provided in this case that experienced and skilled candidates would have likely turned down employment at AIC without this generous benefit." (Staff Init. Br. 20.) To prove that negative would require AIC to travel back in time to determine whether the "Experienced Professionals" would have accepted employment with AIC, absent a loss-on-sale benefit. That sort of retrospective "but for" question is not the measurement of prudence. AIC's written policies set forth the criteria and conditions that determine eligibility.

(AIC Init. Br. 34.) These policies also set forth the limitations on the loss-on-sale amount that can be reimbursed. (*Id*. at 34, 36.) These policies are crafted based on benefits offered by AIC's peers. (*Id*. at 34.) And these policies include a loss-on-sale benefit that recognizes the economic realities of the Midwest. (*Id*. at 35.) These facts demonstrate the prudence and reasonableness of including a limited loss-on-sale benefit, as part of the total package of relocation benefits, as an intended tool for the recruitment and retaining of employees.

The substantial weight of the evidence supports the conclusion that the loss-on-sale expenses paid to three "Experienced Professionals" and charged to Account 588 in 2012 are actual costs of delivery services that were prudently incurred and reasonable in amount. The Commission should decline to adopt Staff's proposed disallowance as unsupported.

3. Purchases – Other (Account 588)

Staff asks the Commission to disallow costs for an assortment of purchases AIC charged to Account 588 in 2012. The items contested by Staff run the gamut from electrical equipment to company picnics. (AIC Init. Br. 42-43; Ameren Ex. 19.1.) They included televisions, cable TV service, wireless headsets, GPS, cell phone signal boosters, various office supplies, various meals provided at work meetings, flowers provided to employees who suffered a death or illness in the family, vehicle safety stickers, prizes for safety training exercises, giveaways for statewide safety fairs, supplies for safety meetings, and achievement awards for length of service, outstanding individual performance, or unblemished safety records. Staff claims none of these costs are recoverable in formula rates, because they are not necessary for utility service and not beneficial to utility customers. But Staff never explains the source or application of its standards. And Staff never explains the whys and wherefores of its disallowances: why it believes the items are not necessary, why it believes they do not benefit customers, and why the justifications AIC provided are not sufficient. The Commission, as the fact finder, is tasked with

determining whether the facts in evidence demonstrate a purchase was a prudent and reasonable cost of delivery service. The bare opinions and beliefs that Staff offers are not sufficient.

Staff cites to general standards in their initial brief. (Staff Init. Br. 21.) But then Staff simply asserts that a variety of purchases are not necessary for utility service and not beneficial for utility customers, without providing any supporting analysis. The facts Staff rely upon in formulating its opinions are the types of purchases made and the specific items purchased. Hardly any weight is given to the business justifications AIC asserted. Hardly any mention is made of the supporting surrebuttal testimony AIC submitted. And no explanations are provided for the specific expenses Staff disallows. "Regardless of how skilled or experienced an expert may be, he is not permitted to speculate or to state a judgment based on conjecture, i.e., a conclusion based on assumptions not in evidence or contradicted by the evidence." *Royal Elm Nursing and Convalescent Ctr., Inc. v. N. Ill. Gas Co.*, 173 Ill. App. 3d 74, 79 (1st Dist. 1988) (the credibility and conclusions of utility expert witness were undermined by opinions based on circumstantial evidence and conjecture). But that is exactly what Staff has done on this issue: present speculation not based in fact that ignores the evidence AIC offered to demonstrate the prudence and reasonableness of the costs.

No fault can be given to the methodical and meticulous review Staff conducted on the purchases charged to Account 588. As both parties note, Staff reviewed over 38,000 lines of data. (Staff Init. Br. 28; AIC Init. Br. 40.) But where the extent of Staff's review can be praised, the merits of Staff's proposals and analysis remain deficient. The sources for Staff's standards remain unknown and inconsistent with the standard of review under formula rates. (AIC Init. Br. 41.) Indeed, notably absent from this section of Staff's initial brief is any discussion whether the expenses are "prudent" and "reasonable." The analysis supporting Staff's opinions remains lacking. (*Id.*) Time and time again, Staff's initial brief repeats the purchases "represent added

perqs for employees," "do not provide ratepayer benefits," and "are unnecessary for the provision of utility service." (Staff Init. Br. 21-27.) But time and time again, there is no substance underlying these opinions; there are just the opinions.

If those were the only flaws in Staff's analysis, they would be enough to require the Commission to reject Staff's disallowance rather than face reversible error. But Staff also ignores the actual facts surrounding the purpose and context of the purchases at issue. The surrebuttal testimony of AIC witness Mr. Pate (Ameren Exhibit 19.0 (Rev.)) and his exhibit (Ameren Exhibit 19.1) identified and explained the business justification for each purchase or type of purchase. The evidence validated the purchases of, among other things, these items:

- Cell phone signal boosters and GPS improve connectivity and productivity at remote substations. (AIC Init. Br. 44.)
- Digital cameras are used to take pictures of faulty equipment in the field. (*Id.*)
- Televisions broadcast emergency response activities, training materials, weather and news information, and company communications. (*Id*.)
- Hands-free headsets at AIC's AMI operating center increase the productivity of employees sitting in cubicles in close proximity, allowing them to multi-task and eliminate distracting background noise. (*Id*.)
- The installation of a gravel driveway allowed a troubleman to safely park a 41-foot, 26,000-pound bucket truck at his residence, thereby reducing his response time to outages and AIC's cost of service. (*Id*.)
- Cable or satellite TV service provides AIC with continuous, reliable, real-time information on local news stories and extreme weather events in or coming towards AIC's territory—a service not obsolete due to the Internet. (*Id*. at 45.)
- Floral arrangements, made in the utility's name, to honor a death in an employee's family (often times the employee) or wish an employee a speedy recovery from an illness, engaging and showing appreciation to the utility's workforce. (*Id*.)
- The giveaways at educational events on safe digging practices, prizes at statewide safety meetings or mandatory employee training exercises, employee meals at division-sponsored safety events, and safety awards for individual employees in recognition of outstanding achievements in performance or zero recordable incidents on safety records—all are intended to encourage and incentivize

> employees to reduce and limit preventable, recordable injuries, preventable vehicular accidents and workplace safety violations. (*Id*. at 46-47.)

The evidence in support of these purchases and the remaining contested items listed on Ameren Exhibit 19.1 explains the context, underlying rationales and ratepayer benefits of the purchases. Taken together, the manifest weight of the evidence in the record—the information on the specific charges and the sworn testimony of one of AIC's senior leaders—demonstrates the purchases are reasonable in amount, prudently incurred and supportive of delivery service.

Staff's disallowance also fails to address the obvious repercussions the disallowance of these purchases may trigger. Should lineman in the field not carry work cell phones or GPS in their vehicles? Should AIC's divisions no longer have company picnics or safety training exercise? Should AIC stop purchasing televisions and paying for cable TV for its storm and operating centers? Should AIC make outlying troublemen park their vehicles at the office? Should the utility no longer provide food at safety meetings? Should the utility no longer reward its workforce for performance? Should the utility stop buying flowers for employees who died? Each purchase that Staff seeks to remove openly questions the prudence and reasonableness of the related business practice. Staff suggests AIC is free to make these purchases as long as the costs are borne by shareholders, and not ratepayers. But that suggestion illustrates the basic flaw in Staff's reasoning: formula rates are supposed to recover actual costs of delivery service, prudently incurred and reasonable in amount. Staff's testimony fails to provide the facts that would support a finding of imprudence or unreasonableness for any of the disputed purchases. Consequently, the Commission must decline to adopt Staff's adjustment as unsupported.

4. Other Credit Card Expenses

Like its proposed adjustment to Account 588 Purchases, Staff's adjustment to credit card expenses seeks to disallow costs for a variety of purchases made in support of delivery service. The items include televisions and satellite TV service for storm and operating centers (Ameren

Ex. 16.1, p. 1:5, 6, 9-13), employee cell phones and accessories (*id*., p. 1:15-18, 20-24, 26-27), digital cameras, USBs, computer discs and rechargeable batteries (*id*., p. 1:28), portable Wi-Fi hotspots (*id*., p. 1:19), a hotel charge related to a mock storm logistics drill (*id.*, p. 1:3), a conference room DVD player (*id*., p. 1:24), food provided to employees during storm response efforts or safety meetings (*id*., pp. 1:1-2, 7-8, 30-38; 2:39-47), food provided to employees during other work meetings (*id*., p. 2:49-58), food provided to employees during business hours as appreciation (*id*., pp. 2:60-67, 72-77; 3:78-79), fire-retardant clothing (*id*., p. 3:85), chamber dues (*id*., p. 3:87), and new employee giveaways (*id*., p. 3:81-84). Although the amount of Staff's adjustment may be minor, its potential breadth and impact is staggering, implicating (and jeopardizing) established business practices across the utility. AIC opposes Staff's disallowances and calls upon the Commission to reject them in their entirety.[3]

Staff's initial brief refers to these purchases as "unnecessary" and their costs "neither prudently incurred, nor reasonable in amount." (Staff Init. Br. 28, 36.) The suggestion in Staff's adjustment seems evident: Staff doesn't just consider the purchases unnecessary; Staff considers the established business practices unnecessary. AIC respectfully disagrees. During this proceeding, AIC has presented Staff with the work-related justification and context for each purchase. (Ameren Ex. 16.1) AIC's senior leadership has stood up to defend the prudence and reasonableness of each purchase. (Ameren Ex. 16.0 (Voiles Reb.), p. 2-18; Ameren Ex. 19.0 (Rev.) (Pate Sur.), pp. 7-9; Ameren Ex. 26.0 (Voiles Sur.), pp. 2-15.) AIC has done this because it considers the purchases to be appropriate business expenses. Whether it is the charge for

[3] In addition, AG/CUB witness Mr. Brosch proposes a minor credit card adjustment ($4,843) to Account 909 expense based on potentially "comparable" credit card expenses identified by AIC in discovery. (AG Ex. 1.3C, p. 3.) Mr. Brosch, however, did not make any attempt to assess the business justification for the expense, or provide a reason in support of the disallowance of the individual expenses. (Ameren Ex. 14.0 (Rev.) (Kennedy Reb.), pp. 44-45.) In addition, AG/CUB failed to include any evidence in the record identifying the individual charges AIC identified as potentially "comparable" that make up Mr. Brosch's adjustment. Costs incurred for vendors similar of nature to costs excluded in prior Commission dockets should not automatically be labeled as unrecoverable in future rate proceedings. The Commission thus should not adopt AG/CUB's general, unsupported disallowance.

Walmart donuts for a storm meeting, an employee's Blackberry holster, pizza at a safety meeting or decorations for a retirement party, these are charges AIC believes represent prudent and reasonable expenses to operate the utility and engage the workforce. (Ameren Ex. 16.1, p. 1:1, 22, p. 2:39, 75.)

Staff's initial brief devotes nine pages to an adjustment that previously had garnered less than 70 lines in Staff's direct testimony and less than 90 lines in Staff's rebuttal testimony. (ICC Staff Exs. 3.0, pp. 10:196-13:263; 8.0, pp. 16:274-18:363; Staff Init. Br. 28-36.) This is largely a function of the new, extraneous, speculative opinions Staff seeks to improperly inject into the record. But it serves to demonstrate what little analysis Staff brought to the table in testimony in support of its adjustment. No sources for Staff's standards were ever cited. No explanations for specific objectionable expenses were ever given. Even the latest rationales—cobbled together for the first time in Staff's post-hearing brief—do not give the Commission sufficient evidence to accept Staff's adjustment. The fundamental flaw in Staff's adjustment remains: it hinges entirely upon Staff's subjective opinions and speculation on what purchases are necessary and beneficial.

The standards Staff purports to apply illustrate the basic problem with Staff's adjustment.

> The Staff adjustment to disallow $22,000 of costs charged on the Ameren credit cards is based on an assessment of whether the charge was necessary for the provision of utility service, whether the charge provided benefits to ratepayers and not to employees, and whether the charge would be a usual expense in an unregulated competitive business in which stockholders provide the funding, but not a usual expense for a regulated monopoly to recover from ratepayers.

(Staff Init. Br. 28.) Neither in Staff's brief nor testimony is there mention of, or citations to, the sources of Staff's standards. There is no indication what the baseline for "necessary" is, or how Staff decides what is "necessary," and what is not. There is no clue given how Staff would or did determine whether there is (or is not) a benefit to ratepayers for a particular purchase. There is no explanation why the costs of *de minimis* benefits to employees, like donuts at a work

meeting, are not reasonable costs of service for a utility. There is no data or references presented to demonstrate the purchases Staff selects are paid for with shareholder funds in non-regulated companies, and not the income earned from the sale of services and products. There is no proof offered that the purchases Staff selects are expenses regulated utilities usually do not recover in rates. There are no points of comparison whatsoever to support Staff's assertions. Granted, Staff cites the Commission's Order in Docket 12-0293. But as demonstrated in AIC's initial brief, the charges Staff witness Ms. Pearce selected are in no way "similar" to, or the "types" of, expenses disallowed by the Commission in Docket 12-0293. (AIC Init. Br. 50.) These deficiencies demonstrate why Staff's adjustment is arbitrary and why the Commission cannot adopt it.

The random and subjective nature of Staff's adjustment, the lack of factual support and prior, relevant Commission opinions, the absence of references, data and analysis—these warning signs alone would require a dismissal of a proposed adjustment as capricious. But in this instance, Staff also has discounted, without explanation, the evidence AIC has submitted in support of the business justifications and ratepayer benefits for the contested purchases. (AIC Init. Br. 49; Ameren Ex. 16.0, pp. 10-13; Ameren Ex. 16.1; Ameren Ex. 19.0 (Rev.), pp. 15-16, 18-21, 28-29.) The utility equipment in AIC's operating and storm centers, the hotel and food charges related to mock drills, storm response and safety meetings, the employee cell phones and Blackberries—as the Vice-President of AIC Operations AIC witness Mr. Ronald Pate testified, these are essential to the provision of safe, adequate and reliable delivery service. (Ameren Ex. 19.0 (Rev.), pp. 15-16, 21, 28-29; *see also* Ameren Ex. 16.0, p. 10-11.) Staff has not offered any evidence to the contrary other than conjecture. The business meals, other food and beverage purchases, floral arrangements, anniversary and retirement cakes, new employee giveaways—AIC has shown why these are typical expenses in support of delivery service that assist in the operation of the utility and the engagement of the workforce. Staff hasn't presented facts to

show otherwise.

Unable to rebut the justifications AIC provided, Staff attempts muddle the record with extraneous claims AIC witness Ms. Voiles lacked "essential knowledge of the Ameren credit card program." (Staff Init. Br. 30.) This *ad hominem* personal attack, however, has nothing to do with the prudence and reasonableness of the purchases Staff seeks to disallow. That Ms. Voiles did not sponsor the data request attaching the expense reports Ms. Pearce reviewed is meaningless; she analyzed each specific charge Staff seeks to disallow and reviewed the expense reports and supporting documentation. (Ameren Ex. 16.0, pp. 6-7.) Indeed, the reason AIC's exhibit is more complete than Staff's is because Ms. Voiles added missing information and verified business justifications. (*Id.*, p. 8.) That Ms. Voiles did not know, on the stand, details about the number of card holders and supervisors—details that were not within the scope of her testimony—is similarly irrelevant. Both Ms. Voiles and Mr. Pate testified on the controls in place surrounding the approval of corporate credit charges. (*Id.*; Ameren Ex. 19.0 (Rev.), p. 20.) Indeed, Ms. Voiles is the AIC witness in Docket 13-0075, the ongoing Commission proceeding concerning the policies and procedures that govern the usage of corporate credit cards and the reporting of corporate card expenses. (Ameren Ex. 16.0, p. 3.) To suggest she is not qualified to present AIC's evidence on the business justification and context of the purchases is not credible. The eleventh-hour litany of baseless charges Staff lobs at Ms. Voiles should be given no weight.

Staff also claims Ms. Voiles' cross-examination "affirmed several of Staff's concerns related to the use of Ameren credit card." (Staff Init. Br. 31.) The problem is Staff never voiced these concerns in this docket. Nowhere in Ms. Pearce's direct or rebuttal testimony is there any mention of general concerns about the usage of corporate credit cards. Indeed, Ms. Voiles' rebuttal testimony expressly acknowledges that Staff does not offer any opinion on AIC's policies and procedures on corporate credit card usage. (Ameren Ex. 16.0, p. 4.) As Ms. Voiles

notes, the issue before the Commission in the formula rate case is whether the specific 2012 credit card charges are prudently incurred and reasonable in amount, such that they are recoverable in electric delivery service rates. (*Id*.) As Staff fails to mention in its initial brief, there is a completely different proceeding still open, Docket 13-0075, in which Staff has requested numerous extensions for its direct testimony, that concerns generally AIC's policies and procedures. To attempt to inject these "concerns" in this docket for the first time on brief, without providing AIC the opportunity to rebut and cross-examine a Staff witness, is highly improper and unsupported. As with Staff's attacks on Ms. Voiles, these newly-offered "concerns" of Staff should be given no consideration, as AIC has explained in its pending Motion to Strike.

Staff also "disagrees with the rationale provided by Ms. Voiles during cross examination" regarding the business justifications and ratepayer benefits of flowers, new employee giveaways, work-related meals, utility equipment, clothing and finance charges. (Staff Init. Br. 32.) Post-hearing briefing is not the appropriate time for Staff to voice disagreement with responses Staff elicited from Ms. Voiles during cross-examination. For the reasons stated in AIC's pending Motion to Strike, these new expert opinions should be stricken, given no weight and not included in the Commission's final rate order. But even if the timing of Staff's new opinions was not improper, the opinions lack any basis in the factual record to warrant consideration. Flower purchases truly show no genuine care and concern; individual supervisors buy "gifts" to new employees under their direction; employees are distracted by having food at work meetings; free, accurate weather reports and other unidentified systems make televisions and satellite TV service obsolete; no standards exist for logoed clothing purchases—there is nothing in the record to support any of these off-the-cuff opinions. "Regardless of how skilled or experienced an expert may be, he is not permitted to speculate or to state a judgment based on conjecture, i.e., a

conclusion based on assumptions not in evidence or contradicted by the evidence." *Royal Elm Nursing and Convalescent Center, Inc. v. N. Ill. Gas Co.*, 173 Ill. App. 3d 74, 79 (1st Dist. 1988) (the credibility and conclusions of utility expert witness were undermined by opinions based on circumstantial evidence and conjecture). The opinions Staff tries to inject into the record in its initial brief are classic examples of unsupported conjecture that should be given no weight.

For the reasons stated in AIC's initial and reply briefs, the costs for credit card purchases Staff seeks to disallow are actual costs of delivery service, prudently incurred and reasonable in amount. The evidence AIC has submitted on the justification, context and benefits of each purchase demonstrates the expense are recoverable in formula rates. Staff's adjustment lacks the authority, analysis and record support necessary for the Commission to consider it.

5. Sponsorship Expense (Account 930.1)

Staff and AIC both propose an adjustment to forecasted sponsorship expenses. The difference is AIC has proposed an adjustment that is consistent with the Commission's guidance in Docket 12-0293 and Dockets 12-0511/0512 (cons.). The recipient and amounts for the individual 2012 sponsorships have been identified. The educational advertising messages, if applicable, have been identified. The charitable and public welfare purposes of the sponsored event, activity or cause have been identified. And the value of the tangible benefits received by AIC employees has been quantified and removed from the cost of the sponsorship. The adjustment proposed by Staff fails to give any weight to AIC's analysis or the Commission's most recent decision. AIC's adjustment to forecasted sponsorship expenses should be adopted.

As outlined in AIC's initial brief, Staff's testimony, schedules and appendices have provided little in the way of an explanation of the basis for Staff's proposal to disallow the costs of additional sponsorships. (AIC Init. Br. 58-60.) Staff's initial brief follows suit in its brevity. It identifies Staff's generic standards. It cites a few examples of disallowed sponsorships. And it

explains which sponsorship expenses it did *not* disallow. Still absent, however, is an explanation for the expenses Staff did disallow. There remains no indication how Staff picked or applied its standards to disallow each component of its additional adjustment to sponsorship expense. It is not sufficient to simply state an expense was not "necessary" or "beneficial." (*See* Staff Init. Br. 36.) There has to be some analysis that identifies Staff's specific objections to each expense. And there isn't. Just giving examples of expenses proposed for disallowance does not justify Staff's disallowance.

Staff claims AIC did not provide "justification" for Staff's largest disallowances: the sponsorships of youth programs hosted by the Illinois High School Association and the Peoria Rivermen hockey team. (Staff Init. Br. 37.) The opposite is true: Staff has not justified its inconsistent treatment and these disallowances. Staff hasn't explained why the costs AIC removed for tangible benefits are not sufficient. (Ameren Ex. 24.1:69, 133.) Staff overlooks other sponsorships it proposes to disallow where a print advertisement was identified. (AIC Init. Br. 60.) And Staff ignores the explanation AIC provided in surrebuttal testimony why these particular events receive more funding than other events AIC sponsors. (*Id*. at 61.) AIC provided more financial support to these recipients, not just because the events were more expensive to host than other smaller events AIC sponsors, but also because the organizers provided substantial opportunities for advertising. (*Id*.) These particular disallowances typify the absence of analysis supporting Staff's adjustment that makes it arbitrary and capricious.

Staff also contends that where AIC did not have a print advertisement, provide a booth, or sponsor a speaker, "the only message that could be conveyed would be promotional or goodwill." (Staff Init. Br. 37.) It strains credulity to argue the absence of an advertisement is somehow "goodwill" advertising that must be disallowed under Section 9-225 of the Act. In Docket 10-0467, the Commission found the fact that a utility may receive "public recognition"

for its sponsorship of civic events does not mean the associated costs are *per se* unrecoverable and subject to a blanket disallowance. *Commonwealth Edison Co.*, Docket 10-0467, Order, p. 109 (May 24, 2011). In Dockets 12-0511/0512 (cons.), the Commission again rejected an adjustment to disallow sponsorships of local charities and community events as somehow promoting the utilities or fostering goodwill. *N. Shore Gas Co., et al.*, Dockets 12-0511/12-0512 (cons.), Order pp. 161-64 (June 18, 2013). The sponsorship costs the Commission permitted in those dockets are the same types of sponsorship costs AIC seeks to recover in this proceeding. Staff cannot credibly argue otherwise. And that Staff's initial brief continues to ignore the Commission's most recent order on sponsorships speaks volumes. To the extent the language Staff cites from Docket 12-0001—the only prior Commission opinion Staff's initial brief bothers to cite—suggests corporate sponsorships that do not offer advertising opportunities are *per se* "goodwill advertising," that conclusion is neither consistent with the Commission's other opinions nor a proper interpretation and application of Section 9-225. For an expense to be disallowed as goodwill advertising, there must be actual advertising to disallow.

Staff claims AIC stated the advertising standard of Section 9-225 should apply to the sponsorship costs charged to Account 930.1 and identified in Ameren Exhibits 6.2 (Rev.) and 24.1 (Rev.). (*See* Staff Init. Br. 37.) That assertion is simply not true, and ignores the analysis and arguments presented in AIC's sponsorship exhibits and the accompanying rebuttal and surrebuttal testimony of AIC witness Mr. Thomas Kennedy. The purpose of Ameren Exhibits 6.2 (Rev.) and 24.1 (Rev.) was to support the recoverability of the expense, not justify the accounting of the expense. In Docket 12-0293 and Dockets 12-0511/0512 (cons.), the Commission declined to adopt the position that historical accounting is determinative of the ratemaking analysis. The same consideration should be applied here when judging AIC's

sponsorship costs in this case.[4]

Staff claims its "comprehensive and reasonable" analysis supports its adjustment. (Staff Init. Br. 38.) Any review of the record, however, illustrates Staff's analysis was far from comprehensive. There is no demonstration that sponsorships without advertising opportunities are disallowable goodwill. There is no explanation why sponsorships without advertisements are not necessary and do not produce ratepayer benefits. There is no examination of the appropriateness of AIC's self-disallowance. There is no analysis of the charitable and public welfare benefits that flow from AIC's financial support of local communities. There is no recognition of the Commission's prior relevant decisions that expressly allow the same sponsorship costs AIC seeks to recover here. These deficiencies demonstrate Staff's analysis is an inadequate basis for a disallowance.

The electric-allocated portion of tangible benefits AIC employees received in 2012 from sponsorship recipients has been removed from the revenue requirement. The remainder of the 2012 electric-allocated sponsorship expenses should be recovered in AIC's formula rates. The evidence submitted shows the sponsorship costs provided AIC with cost-effective opportunities to reach customers with educational messages, or otherwise provided financial support for a charitable or public welfare purpose, to local communities and organizations. Staff fails to support its larger disallowance with convincing, specific reasons why additional amounts of sponsorship expense are not recoverable. The sponsorship expenses (less tangible benefits received) are reasonable in amount, prudently incurred, of value to ratepayers, and recoverable.

[4] Staff's reliance on Ameren Exhibit 6.3 (Rev.) to support its disallowance is misplaced. The point of that exhibit was to identify electric production and publication advertising costs charged to Account 909 in 2012. It did not concern the sponsorships and community outreach expenses charged to Accounts 930.1 and 908 respectively. The one sentence in Ameren Exhibit 6.3 (Rev.) that mentions sponsorships directs Staff to Ameren Exhibit 6.2 (Rev.). That AIC did not produce an advertisement for a sponsorship does not support the automatic disallowance of the expense.

6. Community Outreach Expense (Account 908)

Like its adjustment to disallow additional sponsorship costs, Staff's adjustment to disallow additional community outreach costs is arbitrary and not adequately supported. Staff's initial brief continues to allow cost recovery of sponsored outreach events that provided AIC with opportunities to advertise. (Staff Init. Br. 38-39.) But Staff continues to disallow entirely the cost of any event where such opportunities did not occur. The relevance of that distinction is never explained. Nor does Staff explain the application of its standards. There is no indication why community outreach events without advertising are not necessary for the distribution of electricity and not beneficial to ratepayers, but community outreach events with advertising are. Nor is there any indication why sponsorships with print advertisements are recoverable, while sponsorships with signage in the event space or recognition on the event's website are not. (AIC Init. Br. 66-67.) Staff simply states, "Ratepayers should not be responsible for funding county fairs and festivals." (Staff Init. Br. 39.) That assertion directly contradicts the Commission's findings in Dockets 12-0511/0512 (cons.)—a decision Staff chooses not to address in testimony or briefing. Indeed, in that decision, the Commission rejected Staff's proposed application of the "philanthropic light" language from Docket 12-0001 to disallow the same type of sponsorship and community outreach costs at issue here. *N. Shore Gas Co. et al.*, Dockets 12-0511/0512 (cons.), Order, pp. 162-163 (disregarding Staff's argument that sponsorships putting a utility's name before the public in a "philanthropic light" should be disallowed). The Commission cannot similarly ignore its own decisions. The Commission should decline to adopt Staff's proposed disallowance of community outreach costs.

7. Advertising and Public Relations Expense

a. Potentially Comparable Simantel Expense (Account 909)

AIC's initial brief details the reasons why the Account 909 Simantel charge at issue

($4,125) should be recovered in rates as prudent and reasonable. (AIC Init. Br. 68-70.) A review of Staff's initial brief indicates Staff remains satisfied the information provided in discovery supports recovery of the expense. (Staff Init. Br. 39.) Although the AG and CUB did not separately brief this expense, the amount is included in AG/CUB witness Mr. Brosch's overall adjustment. (AG Ex. 1.3C, line 1 & fn. 1.) As a result, the amount remains contested. For the reasons indicated in AIC's initial brief, the Commission should decline to include this expense in any adjustment to Account 909 or Account 930.2 expense.

b. Potentially Comparable Simantel Expense (Account 930.2)

All parties propose disallowances to remove Account 930.2 Simantel expenses identified as potentially "comparable" to expenses disallowed in Docket 12-0293. But only Staff and AIC identify specific invoices for disallowance. AIC agreed on surrebuttal to remove the costs of two invoices totaling $8,453. (AIC Init. Br. 71 n. 11.) Staff seeks to remove $59,362 more for invoiced amounts it does not consider necessary for utility service or supported by identified work product. (*Id.* at 71-72 & 71 n. 11.) AG/CUB witness Mr. Brosch, on the other hand, hasn't identified particular invoiced objectionable expenses, and admits he did not conduct an independent review. (AIC Init. Br. 79.) To its credit, Staff has identified "specific concerns with particular expenses," which the Commission has required in AIC's last two formula rate proceedings to support a disallowance. *Ameren Ill. Co.*, 12-0293, Order, p. 67; *see also Ameren Ill. Co.*, Docket 12-0001, Order, p. 92 (requiring "specific reasons behind objections to an expense"). In contrast, the across-the-board adjustment advocated by AG/CUB lacks the required specificity for consideration. With the AG/CUB adjustment essentially taken off the board, the debate becomes whether the specific Simantel expenses Staff identified (or some smaller subset) are prudent and reasonable costs of delivery service.

The disagreement between Staff and AIC is twofold. First, there are a handful of

invoiced amounts Staff argues should be disallowed *only* because they have "no identifiable work product." (ICC Staff Ex. 10.0, Sch. 10:03:1, 5, 6, 9, 10; Ameren Ex. 24.6 (Rev.) (same lines).) As indicated in AIC's initial brief, this adjustment is problematic, in part, because Staff's testimony doesn't contain any discussion on the source and application of this "work product" standard. (AIC Init. Br. 72.) The larger problem though is the invoice descriptions actually describe the work product and services provided. Three of the five invoices relate to internal discussions and meetings for which Simantel was asked to develop media and messaging (line 1), organize historical Human Resources material (line 5) and develop a full-blown media plan (line 6). The remaining two invoices relate to the design and production of word marks for internal departments (lines 9 and 10). The descriptions of the remaining invoiced amounts that Staff seeks to disallow for not having "identifiable work product" and not being "necessary for utility service" similarly identify the tangible product or service provided: website video (line 13), PowerPoint (lines 14-18) and magazine print advertisement (line 20-21). The high-level "analysis" conducted by Staff glosses over these details, which support recovery of the expenses.

The other point of disagreement between Staff and AIC concerns whether certain Simantel costs are actual costs of delivery service. As acknowledged in Staff and AIC's initial briefs, these invoiced costs concern "Methane to Megawatts" messaging (line 13), "clean coal" research (lines 14-15), and communications on economic development in the Greater St. Louis area (line 16-18, 20-29). (Staff Init. Br. 40; AIC Init. Br. 73 & n. 12.) Staff argues the economic development expenses are "not necessary for the distribution of electricity," while the methane and clean coal expenses relate to the generation of electricity. (Staff Init. Br. 40.) As with Staff's "work product" standard, there is no discussion of the source and application of Staff's "necessary" standard. Nor has Staff claimed that these expenses are "goodwill advertising" or costs that shareholders should bear. AIC respectfully disagrees that the descriptions of the

services "clearly" demonstrate these expenses are not reasonably related to delivery service. (Staff Init. Br. 39.) For example, the PowerPoint speeches and print advertisements on economic development—the majority of the expenses Staff deems unnecessary—communicate the role AIC plays in creating jobs for Illinois citizens by investing in delivery systems and otherwise supporting the growth of industrial and commercial customers. (AIC Init. Br. 73.)[5] All in all, Staff has failed to demonstrate the invoiced costs are not prudent and reasonable expenses that should not be recovered through AIC's formula rate as an actual cost of delivery service. Nor has Staff indicated where these costs should be recovered, if not through electric formula rates.

The AG and CUB briefs add little value to the debate over whether Staff's concerns with particular expenses justify a disallowance, since neither party gives specific reasons a particular invoiced cost should be disallowed. CUB's initial brief simply argues the Commission should adopt adjustments for expenses "comparable to costs disallowed by the Commission in Docket No. 12-0293." (CUB Init. Br. 13.) Which expenses, the reader is left to guess. CUB doesn't provide any specific concerns that underlie its objections. CUB doesn't identify particular expenses. CUB's sole basis for disallowance remains the basis identified by AG/CUB witness Mr. Brosch: the fact AIC identified the invoice as potentially comparable. (AIC Init. Br. 73.)

In rebuttal, AG/CUB witness Mr. Brosch explained he "relied upon a Company-prepared search for 'potentially comparable expense' incurred in the test year" as the basis for his adjustment to remove all potentially comparable Simantel charges identified by AIC in discovery. (AG Ex. 3.0C, p. 21:443-44.) He admitted he "did not exhaustively analyze each invoice for each vendor charge incurred by the Company." (*Id*. at 21:448-49.) And he admitted he did not perform an "independent critique" of the potentially comparable charges. (*Id.*, at 21:

[5] As indicated in AIC's initial brief, the "clean coal" research relates to mandatory quarterly ICC environmental disclosures on sources of electricity and the "methane" messaging relates to customer education on the benefits of renewable sources of electricity. (AIC Init. Br. 73 n. 12.)

455-56.) Those admissions illustrate why AG/CUB's adjustment cannot be adopted; for how can the Commission disallow specific expenses, if a party has not even identified them.

In its initial brief, the AG attempts to resuscitate Mr. Brosch's adjustment with additional analysis of the record evidence its own expert didn't conduct. The AG's brief cites a "review of the descriptions in Ameren Exhibit 24.6 reveals both the FEFL work undertaken by Simantel . . . as well as numerous other image-enhancing messages not needed to provide reliable energy delivery services." (AG Init. Br. 38.) The AG's brief also cites a review of "illustrative copies of specimen work product" that leads the AG to conclude AIC "correctly concluded that [the expenses] were 'comparable' to certain activities and expenses disallowed in Ameren's last formula rate case." (*Id.* at 39.) But what is still missing, even in this eleventh hour "review," is the sort of invoice-by-invoice analysis the Commission has required to support a disallowance. Simply plucking out snippets from a few documents doesn't make the AG's global disallowance any less general and generic. There must be (1) a specific invoice or invoices identified that (2) represents the cost incurred for (3) a particular objectionable message that was (4) disseminated widely enough to constitute "goodwill" advertising under Section 9-225. Although the AG argues for the disallowance of specific vendor invoices elsewhere (*e.g.*, Karen Foss LLC and Obata Design), that sort of analysis still hasn't happened here, with respect to Simantel charges. As a result, the AG still paints its "comparable" and "image" adjustment with too broad a brush.

For the reasons identified in AIC's initial and reply briefs, the Commission should decline to disallow any potentially "comparable" Account 930.2 Simantel expenses other than the invoiced amounts AIC already has removed from the revenue requirement.

c. Other Simantel Expenses (Account 930.2)

The AG and CUB do not brief separately Mr. Brosch's adjustment to remove 50% of the remaining Simantel expenses not identified during discovery as "potentially comparable." But

both parties continue to advocate this additional adjustment. (AG Init. Br. 40-41; CUB Init. Br. 13.) CUB claims "much of Simantel's work in 2012 was primarily intended to enhance the public image and reputation of Ameren, rather than meet any specific need." (CUB Init. Br. 14.) The AG similarly claims the Simantel expense includes "extensive image advertising and parent corporate messaging." (AG Init. Br. 40.)[6] The basis for their adjustment is Mr. Brosch's opinion that the charges "represent a blend of reasonably needed administrative and advertising support, along with a number of activities and costs that are entirely discretionary and not needed to provide safe and adequate utility services in Illinois." (AG Ex. 3.0C, pp. 26:562-27:564.)

No matter how the AG and CUB characterize Mr. Brosch's adjustment in brief however, it cannot change the fact that Mr. Brosch admitted he did not "analyze each invoice for each vendor charge" and "applied a 50 percent disallowance factor to the Simantel public relations charges *in place of a more detailed review*." (AG Ex. 3.0C, p. 21:448-452.) Mr. Brosch applied his general disallowance factor, even though AIC provided Simantel invoices in discovery, and manually compiled information from these invoices into discovery responses, workpapers and exhibits sponsored by AIC witness Mr. Kennedy. (AIC Init. Br. 76.) Indeed, Mr. Brosch had everything at his fingertips to argue for the disallowance of specific Simantel invoices. This is what AIC did. This is what Staff did. This is what Mr. Brosch did for other vendors. And this is what the Commission has required parties do, in AIC's first two formula rate proceedings, when it has rejected the application of generic thresholds and general disallowances. *See Ameren Ill. Co.*, Docket 12-0293, Order, p. 67 ("[A]s a general matter the Commission is reluctant to disallow costs in the absence of specific concerns with particular expenses."); *Ameren Ill. Co.*,

[6] The AG also claims there was a substantial increase in Public Relations expense in 2012 for which AIC failed to explain in direct. (AG Init. Br. 36, 40.) However, as explained in AIC's initial brief, the increase in Account 930.2 expenses in general and Public Relations expenses was disclosed in direct testimony. (AIC Init. Br. 74.) Moreover, overall electric expense in Account 909 and 930.2 in 2012 decreased in 2012, compared to 2011. (*Id.*)

Docket 12-0001, Order, p. 92 ("[T]he Commission is not comfortable accepting a general adjustment to category of costs. In the absence of specific reasons behind objections to an expense, the Commission questions whether it can know if a disallowance is indeed warranted."). Mr. Brosch's general adjustment must be rejected here for the same reason.

Even a cursory review of the Simantel expenses allocated in part or directly assigned to AIC shows many of the expenses included in the scope of Mr. Brosch's general adjustment concerned print and video communication materials placed and distributed in Illinois media markets. For example, there is a $26,281 direct charge for a 30 second television spot on the education messages surrounding choice for Illinois consumers. (Ameren Ex. 24.6, p. 7:117.) There is a $40,490 allocated charge to produce televisions messages on equipment safety and corporate citizenship. (*Id.*, p. 7:122.) There is a $15,100 allocated charge for creative direction and production of television messages. (*Id.*, p. 7:141.) There is a $10,206 allocated charge to develop an intern brochure and finalize artwork for recruiting pages. (*Id.*, p. 7:142.) There is a $41,124 charge for work done on the production of 2012 television and digital advertisements to educate customer on bill payment options. (*Id.*, p. 8:158.) And those are not the only examples of media and print advertisement work listed. (*See also id.*, p. 6:111-113; p. 7:114, 116, 119, 121, 124-25, 128, 130-31, 133, 134, 136, 137, 138, 140; p. 8:144-45, 148-52, 155, 157.)

Other Simantel charges on Ameren Exhibit 24.6 (Rev.) are allocated AMS expenses that Mr. Brosch recognizes are "needed administrative" support. (AG Ex. 3.0C, p. 26:562.) Ameren Exhibit 24.6 (Rev.) includes Simantel charges for creative strategy sessions on quarterly media plans (lines 32-35, 97, 153), graphic and art design (lines 36-37, 44, 47-53, 59), speeches and presentations (lines 40-41, 54, 60), copywriting (lines 38-39, 43, 45-46, 52, 55, 57, 126), a photo library (line 56), twitter graphics (line 58), employee training and town halls (lines 61-72, 92-93, 100-108), educational messages at Ameren offices (lines 73-82, 94-96), publications on industry

issues (lines 83-87, 99, 147, 156), volunteer materials (line 88), employee safety initiatives (lines 89-91), new employee education materials (lines 132, 142), and general account management (lines 115, 118, 120, 123, 129, 135, 139, 143, 146, 154). To the extent any party wanted to lodge specific objections to particular expenses, the invoice-level detail was compiled and produced.

Terms like "goodwill" or "image" have become buzz words. But adequately supporting a disallowance requires more than just a label, or in this case an entire category of expenses. It requires a demonstration that the substantial weight of the evidence actually reinforces the label for that specific expense. A party can call a vendor's expenses "goodwill" or "image" enhancement. But that won't make it so, if the record does not back it. In this instance, with respect to the 50% general disallowance AG/CUB proposes, the necessary validation has not occurred. In the absence of specific objections to particular Simantel invoices, the Commission must reject the adjustment.

d. Other Public Relations Expense (Account 930.2)

The AG seeks to disallow costs for three specific vendor invoices (Karen Foss LLC, Obata Design, Inc., and St. Louis Business Journal) it claims are nothing more than corporate "image" campaigns. (AG Init. Br. 42-43). But as explained in AIC's initial brief, there is no evidence in the record to suggest these expenses were part of a deliberate exercise to enhance AIC's reputation in the public. (AIC Init. Br. 77-80.) These expenses paid for media and communications training for AMS and AIC executives (Karen Foss LLC). (*Id*. at 79.) They paid for a qualified vendor to produce the Corporate Social Responsibility (CSR) report (Obata Design, Inc.). (*Id*. at 80.) And they paid for a sponsorship of a women's conference that provided opportunities to advertise and leadership training and skills to personnel (St. Louis Business Journal). (*Id*.) These invoices constitute outside agency expenses, which AIC incurred in executing prudent business decisions, and which no other party has clamed are unreasonable

in amount. The best "evidence" the AG can offer in return is speculation regarding AIC's intentions.[7]

The AG claims it is "apparent" the Karen Foss LLC media training was "intended to enhance [AIC's] image in the media." (AG Init. Br. 42.) But the AG hasn't offered any evidence of intention. The AG hasn't identified any specific statements in AIC's testimony or data responses to support that assertion. Indeed, quite the opposite is true: AIC witness Mr. Thomas Kennedy—one of the employees who actually attended the training—has indicated the purpose of the training was to learn how to address sensitive subjects regarding service and frame messages to accurately and quickly educate customers. (AIC Init. Br. 79.)

The AG also claims documents on social responsibility "clearly" fall within the definition of goodwill. (AG Init. Br. 43.) But again, the AG has not explained why this is so. On the other hand, AIC has testified that independent studies confirm customers want to hear about the actions regulated utilities are taking to minimize the environmental impact of their services, including their delivery services. (AIC Init. Br. 79.) This shows the purpose of the report was to educate customers on the utility's efforts to reduce its environmental footprint, not dazzle them with the utility's good deeds.

The AG lastly contends AIC's allocated share of the sponsorship of the St. Louis Business Journal Women's Conference constituted "corporate image or goodwill advertising." (AG Init. Br. 42.) This assertion fails to explain why the sponsored event makes the related cost automatically goodwill. And it ignores the evidence in the record, including AIC's response to the AG's discovery request, that indicates the event provided AIC with an opportunity to display

[7] CUB's initial brief simply parrots the testimony of Mr. Brosch on his other public relations expense adjustments without offering any additional legal analysis. Since AIC has refuted Mr. Brosch's assertions in its response to the AG, it is not necessary to replicate the same arguments in response to CUB. The only point worth making is CUB credits Staff witness Mr. Knepler with supporting Mr. Brosch's other public relations expense adjustments. (CUB Init. Br. 14.) Staff, however, does not adopt Mr. Brosch's other Public Relations expense adjustments.

information on energy efficiency programs, as well as leadership training. (*Id*. at 80.) This version of history—the accurate version—supports cost recovery.

The AG would like the Commission to believe AIC unabashedly incurred these expenses for the intended purpose of image enhancement. (AG Init. Br. 41-44.) But the Commission cannot base its findings on mere beliefs. They have to be based on facts. And the AG has no facts to offer. The Commission should not adopt the AG/CUB adjustment to remove costs for specific invoices for Karen Foss LLC, Obata Design, Inc. and St. Louis Business Journal.

C. Recommended Operating Revenue and Expenses

1. Filing Year

2. Reconciliation Year

IV. COST OF CAPITAL AND RATE OF RETURN

A. Resolved Issues

1. Rate of Return on Common Equity

2. CWIP Accruing AFDUC Adjustments

3. Balance and Embedded Cost of Preferred Stock

B. Contested Issues

1. Capital Structure

When it comes to capital structure, EIMA plainly sets a default: "The performance-based formula rate approved by the Commission *shall* . . . Reflect the utility's *actual* year-end capital structure for the applicable calendar year, excluding goodwill, subject to a determination of prudence and reasonableness consistent with Commission practice and law." 220 ILCS 5/16-108.5(c)(2) (emphasis added). This means that to adjust an EIMA utility's actual year-end capital structure, the Commission must find it imprudent or unreasonable. The record of this proceeding does not support such a finding for AIC's 2012 actual capital structure. That actual capital structure is reasonable by any measure, and the evidence demonstrates that AIC prudently

managed it to maintain an investment grade credit rating so that AIC can fund its large EIMA investment commitments at a cost reasonable to AIC and its customers. (AIC Init. Br. 82-87.)

Despite the requirement that AIC's actual capital structure be used to set rates in this proceeding (which rule Staff does not cite in brief *at all*),[8] Staff and IIEC would impute to AIC a reduced equity ratio. They claim AIC's actual equity ratio is too high because it doesn't account for AIC's (allegedly) reduced risk as an EIMA participant. Staff also invokes Section 9-230 of the Act as an additional reason to not use the actual capital structure ratio required by EIMA. These are not sound reasons to adjust AIC's 2012 year-end actual capital structure, and both parties' positions are at odds with the clear provisions of the EIMA.

Staff and IIEC's Adjustment to Account for Reduced Risk Ignores EIMA.

Staff and IIEC claim the Commission can tinker with AIC's actual 54.33% equity ratio because that ratio does not reflect that EIMA has reduced AIC's operating and financial risks relative to Ameren. (Staff Init. Br. 46-47; IIEC Init. Br. 3-6.) That claim fails for two reasons.

It ignores that that EIMA *specifically prescribes* the proper capital structure—the "actual year-end capital structure." 220 ILCS 5/16-108.5(c)(2). It does not confer authorization to adjust that structure based upon conjecture about the relative benefits EIMA offers the utility over and above some measure associated with traditional ratemaking practices. Neither Staff nor IIEC cite any, certainly. The default actual capital structure only can be adjusted upon "a determination of prudence and reasonableness." *Id*. Assuming that AIC is less risky and enjoys a more favorable regulatory environment under EIMA relative to other similarly situated utilities, or to AIC prior to the EIMA, as Staff and IIEC claim, does not explain if or why AIC's actual equity ratio is imprudent or unreasonable. Nor does it provide a basis upon which to override the intent of the General Assembly to use actual year-end capital structure.

[8] (*See generally* Staff Init. Br. 40-57.)

Staff and IIEC's claim that AIC's actual capital structure should be adjusted to account for reduced risk due to EIMA also ignores EIMA's comprehensive scheme. EIMA sets forth, in plain terms, the reformed rate-setting process expressly intended by the General Assembly to entice electric utilities to make demanding investment commitments.

To participate in EIMA, AIC must commit to invest $625,000,000 over a 10-year period in specified State energy upgrades and modernization projects. 220 ILCS 5/16-108.5(b)(2)(A)–(B). AIC also must commit $1,000,000 a year, for ten years, to "energy low-income and support program[s]." 220 ILCS 16-108.5(b-10)(1)–(5). Although those hundreds of millions of dollars in investment will create many jobs and benefit the Illinois economy, to leave no doubt, EIMA requires AIC to assure that its investment, in the peak program year, "shall create 450 full-time equivalent jobs . . . related to the provision of electric service." 220 ILCS 5/16-108.5(b).[9]

To make the significant investment it requires appealing and possible, EIMA establishes a predictable, stable, and transparent ratemaking scheme—"a performance-based formula rate"—designed to align the utility's actual costs with rates that adjust annually. 220 ILCS 5/16-108.5(b) ("A participating utility shall recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and process set forth in this Section.") EIMA leaves no room for guesswork in determining what the formula rate cost inputs, including the capital structure data, should be for the annual adjustments. They must be derived from "final historical data reflected in the utility's most recently filed annual FERC Form 1." 220 ILCS 5/16-108.5(d)(1). An EIMA utility's return on equity also is formulaic. It "shall be calculated as the sum of the

[9] The commitment that AIC must make is not just monetary. The law also requires utilities to meet strict performance goals and metrics, such as outage reductions, improvements in service reliability, and increased billing efficiency. 220 ILCS 5/16-108.5(f)(1)–(9). Failure to meet these goals may result in significant financial consequences. 220 ILCS 5/16-108.5(f-5).

following: (A) the average for the applicable calendar year of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication; and (B) 580 basis points." 220 ILCS 5/16-108.5(c)(3). Finally, to the extent the formula rate under- or over-recovers the cost of service, EIMA provides for annual reconciliation "with interest." 220 ILCS 5/16-108.5(c)(6).

All this shows that EIMA's purpose is to induce utilities to make large investments that benefit the State infrastructure and economy and also track costs closely to what was actually incurred on an annual basis. The provisions above reflect the clear purpose of the EIMA: they require a commitment, offer an incentive in exchange, and provide for annual update.

In its detailed prescriptions, EIMA differs from the rate-setting laws that Illinois has long had on the books. *See, e.g.*, 220 ILCS 5/9-101 (instructing the Commission to set "just and reasonable rates"). Traditional ratemaking provided for general rate increases that lasted indefinitely and accordingly allowed for Commission discretion to strike a balance between the interests of utilities, ratepayers and other stakeholders based upon the evidence. EIMA adjusts that dynamic; the comprehensive enactment comes with the balancing built in, achieved by means of an annual update and review process. Thus, to the extent an EIMA utility's investment risk is reduced due to its participation in EIMA, the General Assembly already accounted for such reduced risk when it established EIMA's formulaic return on equity and actual annual capital structure, while also considering EIMA's substantial incremental capital spending and performance requirements.

Staff and IIEC simply ignore EIMA's scheme, and suggest the General Assembly didn't consider the risks associated with the sizeable investment EIMA requires or the utility's relative risk when it set EIMA's formulaic return on equity. IIEC, for example, argues that feature reduces AIC's investment risk. (IIEC Init. Br. 5.) IIEC fails to mention, however, that 30-year

U.S. Treasury yields currently are historically low, and the average yield in 2012 was 2.92%. (Ameren Ex. 12.0 (Rev.) (Martin Reb.), p. 15.) Therefore, per EIMA, AIC's 2012 return is 8.72%. (Ameren Ex. 4.0 (Rev.) (Martin Dir.), p. 10.) Clearly, the EIMA compensates shareholders for risk with a return much lower than that approved in recent Section 9-201 rate cases decided by the Commission. *See, e.g.*, *N. Shore Gas Co. et al*., Dockets 12-0511/12-0512 (cons.), Order, p. 208 (authorizing 9.28% return); *Ill.-Am. Water Co.*, Docket 11-0767, Order, p. (Sept. 19, 2012) (authorizing 9.34% return). Any risk-based equity adjustment, such as the one proposed by Staff and IIEC, would reduce that return even further and effectuate a *double* count of risk reduction under EIMA. (Ameren Ex. 12.0 (Rev.), p. 15.)

For its part, Staff argues it is appropriate to discard the legislature's balanced scheme and adjust AIC's actual capital structure because EIMA "severs the inherent link between the rate of return on common equity and the level of financial risk associated with a utility's capital structure." (Staff Init. Br. 43.) As AIC's financial expert witness Mr. Perkins explains, however, the relationship between risk and required return obeys financial laws, not regulatory policy, because investors make their own decisions about the level of risk in a given capital structure. (Ameren Ex. 13.0 (Rev.) (Perkins Reb.), pp. 6-7.) Taking other risk factors into account, they determine the required return on the debt and equity they provide. (*Id*.) Put simply, rate-setting mechanics do not reflect how investors view risk. (*Id.*, p. 7.) And EIMA's mechanics should not be tinkered with to accommodate Staff's notions that they do. The Commission cannot supplant the plain language of EIMA—including the actual capital structure default—with notions of how the legislature *should* have balanced risk when it established EIMA's comprehensive scheme.

Staff's Reliance on Section 9-230 of the Act Is Faulty.

Staff claims "*as a matter of law*, Section 9-230 of the Act limits AIC's common equity ratio to 51.00%." (Staff Init. Br. 48 (emphasis added).) Staff's claim fails for many reasons.

First, to the extent Staff premises its claim on the speculation of a single rating agency (S&P), AIC has already explained why Staff's position is narrow, speculative, and nonsensical. (AIC Init. Br. 88-90.) That speculation certainly does not warrant a Section 9-230 adjustment.

Next, it is *Staff's* adjustment that violates Section 9-230. The plain language of that statute requires that a utility's stand-alone capital structure be used as a starting point in determining its cost of capital. 220 ILCS 5/9-230. Any "incremental risk" or "increased cost of capital" inuring to the utility due to its unregulated or nonutility affiliations must be excluded from that determination. *Id.* In other words, Section 9-230 unequivocally precludes imputing to a utility the risk of its affiliates. Staff acknowledges that Ameren's operating risk is greater than AIC's. (Staff Init. Br. 44-45.) Yet Staff would impute it to AIC. This flies in the face of Section 9-230's clear bar that "the Commission shall not include *any* . . . incremental risk, [or] increased cost of capital . . . which is the direct or indirect result of the public utility's affiliation with unregulated or nonutility companies." 220 ILCS 5/9-230 (emphasis added). The statute makes no distinction between greater or lesser "incremental" risk. *Id.* The General Assembly could have said "increased" or "decreased" as it did in the next clause—"*increased* cost of capital." 220 ILCS 5/9-230 (emphasis added). It did not; it said "*any* incremental risk."

Staff's position also suggests that if a utility's equity ratio is higher than its parent's, it necessarily indicates unreasonableness due to that affiliation. This effectively would transform EIMA's clear default requiring "the utility's actual year-end capital structure," 220 ILCS 5/16-108.5(c)(2), to one requiring "the parent's equity ratio or lower." Such a substantive rewrite of EIMA is unlawful. Indeed, Staff's recognition that AIC has a lower operating risk than Ameren should *negate* its Section 9-230 adjustment because it suggests that AIC was *insulated* from Ameren's greater risk profile. That is a far cry from finding the parent's risks or costs impacted AIC's.

Staff's Section 9-230 claim also fails because Staff has not calculated any alleged incremental risk. If the Commissions finds "any incremental risk or increased cost of capital" due to an unregulated affiliation, Section 9-230 requires it to determine the amount. *Ill. Bell Tel. Co. v. Ill. Comm. Comm'n*, 283 Ill. App. 3d 188, 210 (1996) ("[I]f Bell's incremental risk or cost of capital has increased because of its affiliation with Ameritech, the Commission must determine the amount of this increase.") Staff agrees. (Staff Init. Br. 46 ("Though the incremental increase may be difficult to quantify, Section 9-230 of the Act requires the Commission to remove every iota of such increase.").) Nevertheless, Staff does not calculate *any* alleged amount of increased risk here. Instead, Staff simply imputes Ameren's 51.00% equity ratio to AIC because that's what the Commission did in Docket 12-0293.[10] (Staff Init. Br. 46-47.) Staff also contends that equity ratio is "*commensurate* with AIC's actual credit rating in line with its riskier corporate parent." (Staff Init. Br. 47 (emphasis added).) None of the rating agencies, however, suggest that there is some equity ratio, lower than AIC's 2012 actual one, that is "commensurate" with AIC's credit rating, or that imputing a lower equity ratio to it, all else equal, will not affect that rating. (Ameren Ex. 13.0 (Rev.), p. 18.) Rather, as AIC explained in testimony and brief, *all* of the rating agencies have expressed concern about the Illinois regulatory environment and AIC's need to maintain strong credit metrics. (*Id.*; AIC Init. Br. 85-87.)

Undeterred, Staff defends its imputed equity ratio *not* by showing, as EIMA requires, that AIC's *actual* ratio is unreasonable (it is not), but by attempting to show that Staff's hypothetical equity ratio *is* reasonable. (Staff Init. Br. 49-50.) In this way, Staff's "reasonableness" showing puts the prescribed EIMA process on its head. Staff's analysis is flawed in any event.

[10] The Commission's finding imputing Ameren's capital structure to AIC in Docket 12-0293 is currently pending appellate review. Reply Brief for Petitioner at 5-10, *Ameren Ill. Co. v. Ill. Comm. Comm'n*, No. 04-13-0029 (4th Dist. App. Ct., Aug. 2, 2013).

First, it is based on the notion that Staff, or anyone else, can exactly engineer the proper capital structure for AIC. Fine-tuning an "optimal" equity ratio in the face of uncertainty and the myriad variables that go into a debt rating, however, is beyond anyone's ability. (Ameren Ex. 13.0 (Rev.), p. 4.) It seems Staff would agree, as it admits in brief that it is impossible to calculate a minimal cost structure. (Staff Init. Br. 43, n. 4.)

Next, it ignores that financial ratios are only part of the story. In the case of Moody's, they make up only 30% of the rating (with the debt ratio only making up 7.5% of the rating). S&P and Fitch also strongly consider other factors. (Ameren Exs. 13.0 (Rev.), p. 9; 21.0 (Perkins Sur.), pp. 10-11.)

Staff's analysis ignores potential changes to cash flows due to the end of bonus depreciation and AIC's increased capital expenditures. (Ameren Ex. 21.0, p. 11.) It fails to include likely imputed debt arising from pension obligations and preferred stock for the S&P ratings. (*Id.*) It concentrates on ratio changes rather than the low Moody's rating for the regulatory environment (and the concerns of the other agencies about rate case outcomes), and the impact these may have when combined with lowered financial ratios. (*Id.* at 11-12.)

Finally, Staff derives the equity ratios in its analysis from Compustat data that is misleading. (Staff Init. Br. 49-50; Ameren Ex. 21.0, pp. 5-7.) That data has a wide range of accounting equity ratios (from -.2 to 69.9), even for triple-B-rated companies. (Ameren Ex. 21.0, p. 6.) This shows that equity ratios are not the only factors in determining credit ratings, and that the average is not a meaningful measure of a reasonable equity ratio. (*Id*.) The data also includes transmission companies, generating companies, and holding companies, as well as electric operating companies, and utilities with significant amounts of securitized debt, which is not included for rating purposes by S&P. (*Id*., pp. 7, 5-6.) This reduces any comparability to AIC.

The sole conclusion derived by Staff from its "reasonableness" analysis is that "a 51% common equity ratio for [AIC] would not result in a credit rating downgrade." (Staff Init. Br. 51.) But whether an EIMA utility's capital structure does not "result in a rating downgrade" cannot be the test of its reasonableness. The test should be whether the capital structure permits the utility to access the markets under reasonable terms and during varied economic conditions so it can fund its substantial EIMA investment commitments. At hearing, Staff agreed: "I think that [AIC's] financial condition should be managed in a way that would allow them to access the capital markets under most conditions." (Tr. 375:2-5 (Staff witness Ms. Phipps).) Maintaining a credit rating not much above junk grade is not a prudent means of ensuring that access. (AIC Init. Br. 85-87.) That, however, is precisely what Staff suggests in advocating its Section 9-230 adjustment.[11] There simply is no basis for that adjustment.

IIEC's Use of an Average Allowed Equity Ratio Cap Is Unfounded.

IIEC agrees "[t]he formula rate law is not ambiguous" in its requirement that rates be set using the utility's "actual capital structure." (IIEC Init. Br. 10.) Nevertheless, IIEC continues to advocate something *other* than AIC's 2012 actual equity ratio because IIEC contends it is too high relative to the average allowed equity ratios of other electric utilities. (*Id.* at 7-8.) The standard for AIC's capital structure under EIMA, however, is not the average allowed equity ratio in other electric rate cases; it is AIC's actual capital structure, subject only to a determination of reasonableness and prudence. 220 ILCS 5/16-108.5(c)(2).

[11] Staff also contends, "the capital structure of the regulated utility can be manipulated to include excessive equity to inflate the rate of return." (Staff Init. Br. 44.) It does not expressly allege manipulation, nor can it. In discovery, Staff witness Ms. Phipps conceded her "adjustment is not premised on the intent of AIC or Ameren Corp. management to manipulate AIC's capital structure for the benefit or any unregulated or non-utility business." (Ameren Ex. 12.1.) The Commission cannot legally draw the conclusion that AIC's capital structure has been manipulated without a preponderance of the evidence supporting such a finding. *GTE North Inc.*, Docket 93-0301, Order, 1994 Ill. PUC LEXIS 436 *108-09 (Oct. 11, 1994) (refusing to impute an affiliate's capital structure in the absence of material facts to support manipulation) (*citing People ex rel. Hartigan v. Ill. Comm. Comm'n,* 117 Ill.2d 120, 142 (1987)).

Regardless, the data on which IIEC bases its average equity ratio cap actually supports the reasonableness of AIC's actual capital structure. The equity ratios listed in Table 2 of IIEC's brief are misleading. They do not reflect that several states, unlike Illinois, include deferred taxes in the capital structure in their regulatory process. (Ameren Ex. 13.0 (Rev.), p. 24.) Those ratios also reflect the capital structures of transmission-only utilities, which differ from electric companies in terms of operating risks. (*Id.*) Adjusting for these factors, the 2012 ratio data used by IIEC ranges from 42.55% to 59.09%. (*Id.*) AIC's actual 2012 equity ratio is well within that range.

The equity ratios in IIEC's Table 2 also reflect only average equity ratios for rate cases from 2008 through 2012, and not the authorized ratios for individual utilities, which, in many cases, exceed 50%. (IIEC Init. Br. 7, Tbl. 2; Ameren Ex. 13.0 (Rev.), p. 23.) There is a considerable range in allowed equity ratios in any given year. In 2012, 33 out of 48 electric cases authorized an adjusted equity ratio of over 50%. (Ameren Exs. 13.0 (Rev.), p. 23; 5.2; 5.3.) IIEC's own data notes a 2012 average of 50.55%. (IIEC Init. Br. 7, Tbl. 2.) Again, that data serves as additional evidence that AIC's 2012 actual equity ratio is reasonable.[12] Put simply, IIEC's own analysis does not support its arbitrary equity ratio cap. The Commission should reject it.

Finally, IIEC's comparison to ComEd is invalid. (IIEC Init. Br. 8.) ComEd's regulatory equity ratio is only less than 50% because it subtracts approximately $2.6 billion in goodwill from its actual equity balance of $7.3 billion. (Ameren Ex. 13.0 (Rev.), pp. 24-25.) Ignoring this subtraction (which also is applied in AIC rate cases), ComEd's capital structure is above 55%

[12] Also notable about IIEC's assessment is that it suggests that equity ratios generally have not risen from 2008 to 2012. (IIEC Init. Br. 7, Tbl. 2.) Given the 2008 financial crisis and its aftermath, which plagued that period, it is no surprise that other electric utilities, like AIC, have maintained their equity ratios. (Ameren Ex. 12.0 (Rev.), p. 16.)

equity. (*Id.*) Thus, ComEd is not proposing a lower equity ratio, as IIEC claims, it is only acceding to goodwill treatment already established by Commission practice. (*Id*. at 25.) Further, Moody's, in its March 13, 2013 Credit Opinion, shows a lower debt-to-capital ratio (and thus a higher equity ratio) for ComEd than for AIC, both on a current and going-forward basis, a stronger market position, and generally stronger credit metrics. (*Id.*) Thus, any argument that ComEd's situation supports a lower AIC equity ratio is demonstrably false.

Conclusion

As an EIMA participant, AIC has committed to hundreds of millions of dollars of investment in the State. It makes sense for AIC to nurture its credit quality. Staff agrees:

> Q. And is it fair that as Ameren Illinois Company undertakes the capital expenditures required by the Energy Infrastructure Modernization Act it would be undesirable for the Company to have a junk rating? Would you agree?
>
> A. Yes.
>
> Q. So you would have to agree that it's at least important that the Company maintain its investment grade rating from both the customer and company perspective going forward?
>
> A. Generally, yes.

(Tr. 384:9-19 (Staff witness Ms. Phipps).) So does IIEC: "It is important, nigh essential [that AIC] manage its capital structure . . . such that . . . its credit rating is preserved." (IIEC Init. Br. 6.) EIMA recognizes it too. It sets a default—AIC's performance-based formula rates must be based on AIC's "actual year end capital structure," subject only to "a determination of prudence and reasonableness." 220 ILCS 5/16-108.5.

The evidence demonstrates that AIC's 2012 actual 54.33% equity ratio was prudently managed to preserve AIC's credit rating and thereby permit it continued access to the markets under reasonable terms and in all economic conditions to enable it to meet its significant EIMA investment commitments. (AIC Init. Br. 82-87.) It simply would not be prudent for AIC to

ignore the credit ratings agencies' cautions, reduce its equity ratio, and jeopardize its ability to meet those commitments. Yet that is precisely what Staff and IIEC ask the Commission to do. The Commission, however, is bound to honor EIMA as the General Assembly enacted it. It should reject Staff and IIEC's conjectured equity ratios, and approve AIC's 2012 actual year-end capital structure consistent with EIMA.

Perhaps the best way to address Staff's concerns regarding AIC's actual capital structure is not through repeated litigation, but through continued discussions between Staff's cost of capital expert and AIC's. (Ameren Ex. 20.0 (Martin Sur.), p. 24.) As it explains in testimony, AIC has provided Staff with a financial model, and it proposes that it meet with Staff's expert to discuss that model and to reach agreement on AIC's 2013 and 2014 capital structures. (*Id.*) In this way, AIC and Staff can work together to narrow the issues before the Commission in AIC's future formula rate proceedings. (*Id.*)

2. Common Equity Balance

a. Purchase Accounting/Goodwill

In brief, IIEC proposes to exclude an additional $54.4 million from the common equity balance to reflect the difference between AIC's $356 million self-adjustment and AIC's $411 million of goodwill assets. (IIEC Init. Br. 9.) As AIC explained in its initial brief, this adjustment contravenes the Commission's Order in Docket 04-0294—and was expressly rejected in Docket 11-0282. (AIC Init. Br. 99-100.)

IIEC appears to concede as much when it states, "it may appear that Mr. Gorman's adjustment is contrary to Orders in Docket 04-0294 and 11-0282." (IIEC Init. Br. 9.) IIEC then goes on to argue, however, that its proposal is not contrary to the language of the EIMA. (*Id.*) IIEC argues that the "[t]he formula rate law is not ambiguous and contemplates the exclusion of goodwill when determining the utility's 'actual capital structure'." (*Id.* at 10.) Thus, IIEC

contends, the amount of goodwill should not be adjusted for purchase accounting. IIEC argues that "making purchase accounting adjustments to the actual year end capital structure is not permitted under the formula rate because it alters the year end capital structure." (*Id.*)

Notwithstanding the inconsistency between this position and IIEC's apparent ready willingness to "alter the year end capital structure" by imputing a common equity ratio of 50% as discussed above, IIEC's position must be rejected. Purchase accounting and goodwill are intertwined. (Ameren Ex. 9.0 (Rev.) (Stafford Reb.), p. 41.) AIC has eliminated all goodwill from the capital structure, because the effect of the Docket 04-0294 directive is that the elimination of goodwill from the common equity balance must be netted or collapsed against all other purchase accounting entries.

Moreover, AIC's "actual year end capital structure" reflects purchase accounting. The adjustments to goodwill for purchase accounting are made annually in Account 114, and are properly included in the actual capital structure. AIC excluded purchase accounting adjustments recorded in connection with Ameren's acquisitions of AmerenCILCO and AmerenIP consistent with the Commission's Docket 04-0294 directive that such balances not be included in the common equity balance for ratemaking purposes. (Ameren Ex. 9.0 (Rev.), pp. 40-41.) It is IIEC's adjustment that would "alter the year end capital structure" by not adjusting for purchase accounting and overstating common equity balance.

Moreover, IIEC's discussion of the EIMA in support of its arguments is incomplete. In quoting the statute, IIEC omits the second portion of the operative language: the formula rate must "reflect the utility's actual year-end capital structure for the applicable calendar year, excluding goodwill, *subject to a determination of prudence and reasonableness consistent with Commission practice and law*." 220 ILCS 5/16-108.5(c)(2) (emphasis added). Commission practice, as IIEC admits, is to adjust the balance of goodwill to reflect purchase accounting. This

adjustment is necessary to produce a reasonable capital structure, pursuant to the Order in Docket 04-0294. *Ill. Power Co.*, Docket 04-0294, Order, pp. 33-34 (Sept. 22, 2004). AIC's approach is consistent with the statutory language.

IIEC states that the requirement to adjust the goodwill balance for purchase accounting pre-dates the formula rate process, suggesting these requirements do not apply here. But AIC's adjustment of the common equity balance to exclude the effects of purchase accounting has already been reviewed by the Commission in two formula rate proceedings, Dockets 12-0001 and 12-0293. *Ameren Ill. Co.*, Docket 12-0001, Order, *Ameren Ill. Co.*, Docket 12-0293, Order. In Docket 12-0001, the Commission approved AIC's purchase accounting and found that "AIC has followed all accounting rules and Commission Orders relating to its accounting for purchase accounting, or push down accounting." *Ameren Ill. Co.*, Docket 12-0001, Order, p. 119. In that case, as here, AIC adjusted its common equity balance by excluding the effects of purchase accounting. *Ameren Ill. Co.*, Docket 12-0001, Order, p. 115.

AIC also notes that IIEC concludes this section by claiming that AIC has not demonstrated its proposed capital structure is reasonable. As explained in AIC's initial brief (pp. 82-106), however, AIC has.

b. Purchase Accounting/Income Statement

In brief, Staff proposes to subtract $105,536,599 in income statement purchase accounting adjustments, which flowed through to retained earnings, from AIC's common equity balance. (Staff Init. Br. 52.) Staff claims, as its basis for this recommendation, that in Docket 04-0294 the Commission ordered AIC to reverse purchase accounting adjustments associated with the acquisition of IP for ratemaking purposes. (*Id.*) Staff asserts: (1) that AIC admits that it never reversed the net income-related purchase accounting adjustments for ratemaking purposes, nor did Illinois Power and (2) the Company's Account 114 balance does not include $105.5

million of net income-related purchase accounting adjustments, which flowed through retained earnings.

Staff's proposed adjustment should be rejected. As AIC explained at length in its initial brief, AIC has reversed all net income-related purchase accounting for ratemaking purposes. (AIC Init. Br. 100-06.) AIC has removed the effects of purchase accounting from the income statement balances of revenues and expenses in this case. AIC has also eliminated the derivative effects of purchase accounting related retained earnings from the retained earnings balance in this and past rate proceedings. Thus, net income related to purchase accounting is no longer retained by AIC, as the balance recorded to retained earnings has been paid out in common dividends, consistent with the Commission's finding in Docket 12-0001.

In its initial brief, AIC explained that it had not "admitted" that it never reversed the effects of net income related to purchase accounting for ratemaking purposes, and that the data response at issue goes on to explain that the retained earnings adjustment was effectively eliminated through the payment of common dividends. (AIC Init. Br. 104-05.)

Staff's suggestion that AIC's Account 114 balance does not include $105 million of net income-related purchase accounting adjustments that flowed through retained earnings, and this is contrary to the requirement of Docket 04-0294, is also misplaced. (Staff Init. Br. 52.) As AIC explained in its brief (AIC Init. Br. 105), Staff conflates two requirements from Docket 04-0294: (1) that AIC "reverse the effect of push down accounting for state regulatory purposes" and (2) the Commission's decision to "adopt[] the recommendation of Staff witness Ms. Pearce that the impact of push down accounting should be collapsed into Account 114, plant acquisition adjustments, for all Illinois regulatory purposes." *Ill. Power Co.*, Docket 04-0294, Order, pp. 33-34. Staff improperly assumes that the two requirements are one and the same. Second, Staff's position is flawed because it confuses Account 114, a balance sheet account, with AIC's income

statement and other financial statements, which are separate and distinct. (AIC Init. Br. 105-06.) As a matter of accounting, these financial statements cannot be intermingled, as would have to happen for the $105 million of income statement purchase accounting to be reflected in Account 114 as Staff suggests. As AIC witness Mr. Stafford explained: "I'm not sure there's any way, from an accounting standpoint, to collapse income statement balances into a balance sheet account." (Tr. 199:3-18.) In other words, you cannot, as a matter of accounting, collapse income statement balances into a balance sheet account, as Staff proposes.

For these reasons, Staff's adjustment to subtract $105,536,599 in income statement purchase accounting adjustments should be rejected.

3. Balance and Embedded Cost of Long-Term Debt

For the first time in brief, Staff asserts a new basis for its recommendation to disallow a majority of the cost AIC prudently incurred in 2012 to refinance certain long-term debt. Staff claims: "in Staff's view, the recoverability of the 9.75% bond redemption costs is directly related to *how the proceeds from the 2.7% bonds are assigned*." (Staff Init. Br. 53-54 (emphasis added).) Staff then summarily states, "AIC chose to assign $50 million of the 2.7% bond proceeds to eliminate the $50 million cost of debt the Commission imputed to neutralize the effect of that imprudently issued debt on AIC's embedded cost of debt." (*Id.* at 54.) However, no witness testified as to how the proceeds were "assigned" and Staff provides no record cite for its statement. (*Id*.) If this was Staff's view, it should have asserted it in testimony. It did not. Accordingly, AIC has had no opportunity to respond or to present evidence demonstrating the manner in which it "assigned" the proceeds from the 2.7% bonds. Nevertheless, Staff cites no record evidence to support Staff's (new) position.

Perhaps Staff raises its new, unsupported "assignment" argument for the first time in brief because it lacks record evidence to counter AIC's position that Staff's proposal is grossly

disproportionate. As AIC explained in testimony and brief, the Commission's Docket 11-0282 Order approved all but 3% of the total cost of the 9.75% debt. (Ameren Ex. 12.0 (Rev.) (Martin Reb.), p. 5; AIC Init. Br. 111.) Staff, however, recommends that the Commission disallow *100%* of the cost AIC incurred to redeem the first $50 million of the $87.1 million of 9.75% bonds it redeemed in 2012. (Staff Init. Br. 54.) Staff's proposal would unduly punish AIC for a refinancing transaction that Staff concedes was not imprudent. (Ameren Ex. 12.0 (Rev.), p. 3.) Because, as explained, that transaction was prudent (AIC Init. Br. 110-11), the Commission should not disallow *any* of the cost AIC incurred to accomplish it.

Regardless, the manner in which AIC "assigned" the proceeds of its 2012 bond redemption is beside the point. The point is that the transaction was prudent and reflects AIC management's prudent judgment. It resulted in positive net present value economics on a matched-maturity basis, reduced AIC's average cost of debt, and extended the average duration of its long-term debt portfolio. (*Id*. at 111.) The 2012 combined transaction was financially sound, and Staff does not (and cannot) suggest otherwise. Further, AIC as a consolidated entity required the $50 million of 9.75% long-term debt the Commission adjusted in prior dockets in its capital structure, and it would have redeemed the debt in 2012 at a lower interest rate despite that prior adjustment because that is the prudent thing to do. (*Id*.)

If the Commission adopts Staff's position in this case and disallows *any* of the cost actually incurred by AIC in connection with that prudent transaction, it will penalize AIC for its prudency, and it could discourage AIC or other Illinois utilities from undertaking debt refinancing transactions that ultimately benefit both the utility and its customers.

4. Balance and Embedded Cost of Short-Term Debt, including Cost of Credit Facilities

The Commission should reject Staff's adjustment to AIC's 2012 actual credit facilities cost because it is narrow and speculative. Staff continues to argue that the cost of short-term

debt would have been less but for AIC's affiliation with merchant generation operations. (Staff Init. Br. 54-55.) In support, Staff fixates on a statement in a March 2013 S&P report that suggests S&P will upgrade AIC's credit rating upon divestiture of those operations. (*Id*. at 54.) Staff ignores, however, that S&P repeatedly and expressly qualifies the anticipated upgrade. (*See, e.g.*, ICC Staff Ex. 9.0, pp. 4-5; Staff Init. Br. 54-56.) The March 2013 report states an upgrade will depend on Ameren Corp.'s achievement of forecast financial measures, rate case outcomes, and the timing of the divestiture. (Ameren Ex. 20.1, p. 6 (S&P Mar. 14, 2013 "Research Update"); AIC Init. Br. 114.) S&P's June 2013 report reiterates that an upgrade will depend on those variables:

> The ratings on Ameren are on CreditWatch with positive implications, reflecting the high probability of another upgrade following the completion of the merchant sale to Dynegy Inc. The CreditWatch status also reflects our base-case forecast following the transaction's completion, and includes funds from operations (FFO) to debt of about 20% and debt to EBITDA of about 4x. These financial measures are consistent with the 'significant' financial risk profile category and when viewed together with Ameren Corp.'s 'excellent' business risk profile, could support a modestly higher rating. Key risks to our forecast include the outcomes of future rate cases and our expectations for continued weak economic growth within the company's regulated service territories. We could upgrade Ameren and its regulated subsidiaries if the company closes the transaction in a timely manner while meeting our expected financial measures.

(ICC Staff Ex. 9.0, Attach. F, p. 2; Ameren Ex. 13.0 (Rev.) (Perkins Reb.), pp. 10-11.) The June 2013 report adds another qualifier: "Important to the company's credit rating is its ability to demonstrate improved effective management of regulatory risk within Illinois, which we assess as less credit supportive." (ICC Staff Ex. 9.0, Attach. F, p. 3; Ameren Ex. 13.0 (Rev.), p. 11.) Staff disregards the context of S&P's upgrade prediction, but the Commission's decision on this issue should not be so narrowly focused.

Staff's position also is speculative. At hearing Staff witness Ms. Phipps agreed that

predicting a credit rating agency upgrade is inherently subjective. (Tr. 369.) Yet, in brief, Staff discusses an S&P upgrade as if it were a foregone conclusion. For example, Staff asserts "S&P has *clearly stated* that AIC's corporate credit rating absent AIC's affiliation with merchant generation operations would be at least one notch higher." (Staff Init. Br. 54-55 (emphasis added).) S&P, however, has done no such thing, as explained. It is just as easy to speculate as to occurrences that could drive AIC's credit rating down as up. (Ameren Ex. 12.0 (Rev.), p. 6.)

Nevertheless, Staff considers an upgrade a certainty. It persists in this position because Staff has no other argument for an adjustment under Section 9-230 of the Act. That Section bars the Commission from approving any increased cost of capital "which is the direct or indirect result of the public utility's affiliation with unregulated or nonutility companies." 220 ILCS 5/9-230. As discussed, the March 2013 S&P report does not support the conclusion that there is any increased cost of capital due to affiliation. Staff has not otherwise shown AIC's 2012 credit facilities costs *were* the result of its affiliation with Ameren Corp.'s merchant generation operations. Nor can it. There is no record evidence that AIC's affiliation with any other Ameren Corp. subsidiary affected its 2012 cost of debt, including its credit facilities fees. (Ameren Ex. 12.0 (Rev.), p. 10.) In fact, the evidence demonstrates the opposite: in 2012 AIC issued debt at 2.70%, a record-low 10-year coupon rate for the Company. (*Id.*, p. 11.) The only record evidence Staff has (and can) point to is qualified speculation in an S&P report. Referring to that conjecture as if it were fact, however, cannot sustain a Section 9-230 adjustment, and the Commission should not impose one.

C. Recommended Overall Rate of Return on Rate Base

1. Filing Year

2. Reconciliation Year

V. COST OF SERVICE AND RATE DESIGN

A. Resolved Issues

VI. FORMULA RATE TARIFF

A. Separate Proceeding in Docket Nos. 13-0501/13-0517 to Litigate Merits of Proposed Template Changes

B. Process for Implementation of Formula Rate Template Changes in Docket No. 13-0301, if Approved in Docket Nos. 13-0501/13-0517

C. Proposed Template Changes in Docket Nos. 13-0501/13-0517 (for Purpose of Identification of Revenue Requirement Impact if Approved)

AIC notes that each of the issues in this section will be addressed in consolidated Dockets 13-0501 and 13-0517. AIC therefore will not address them here, except for a brief response to Staff on the issue of two cash working capital calculations.

1. Uncollectible Expenses in the Reconciliation Year

2. Gross-up of Reconciliation with Interest and/or Collar revenue requirement adjustments for Uncollectible Expense

3. Year-end balances for Materials & Supplies and Customer Deposits

4. Depreciation Expense

5. Separate Cash Working Capital Calculation for Filing and Reconciliation Year

As indicated above, this issue is being addressed in Dockets 13-0501/13-0517 (cons.). However, AIC notes that it opposes use of two cash working capital calculations because, among other reasons, the revenue requirement difference between the two calculations is small and could increase reconciliation balances. (Tr. 400, 404-05.) Also, use of one cash working capital tying to the Reconciliation Year is consistent with the Order (Appendices A and B) issued for ComEd in Docket 12-0321, which authorized the same cash working capital in both the Reconciliation Year and Filing Year Rate Base using Reconciliation Year inputs. (Ameren Ex. 9.0 (Rev.) (Stafford Reb.), p. 9.)

The purpose of this proceeding is to update the cost inputs to the Commission-approved formula rate template. Staff's reliance on traditional ratemaking schedules for presentation of Staff's cost input adjustments and revenue requirement that include cost inputs are inconsistent with the approved formula rate template and formulae. (Ameren Ex. 17.0 (Mill Reb.), p. 2.) In particular, the traditional schedules present difficulty where an adjustment would require a change to the formula template, as any changes to the approved formula rate template that would be necessary to accommodate Staff's cost inputs cannot be made within the context of this or any other future update proceeding. (*Id.*)

In defending its reliance on traditional ratemaking schedules, Staff's initial brief claims AIC's position is "that the mechanics of a formula model should be the deciding factor for any proposals made in this case." (Staff Init. Br. 68.) This misrepresents AIC's position. The EIMA establishes a formula rate whose structure and protocols are reflected in the template or model. The EIMA prohibits changes to the performance-based formula rate structure or protocols unless such changes are filed in accordance with Section 9-201 of the Act. 220 ILCS 5/16-108.5(c)-(d)(3). In other words, the legal requirement espoused in the EIMA's formula rate is the deciding factor. Until such time the Commission authorizes changes to the Rate MAP-P formula rate tariff and underlying formulae in a Section 9-201 filing, the formula rate template version approved as in Docket 13-0385 must be populated with cost inputs without alteration to the template or formulae.

Staff argues "the law itself requires the Commission to analyze the data inputs and to make adjustments it deems appropriate," and cites to Sections 16-108.5(c)(5) and 16-108.5(d) of the EIMA. (Staff Init. Br. 68.) But again, the inputs are to the formula rate are determined by the Commission approved formula template. Staff ignores Section 16-108.5 (d)(3), which reads in part: "The Commission shall not, however, have the authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) of this Section." 220 ILCS 5/16-108.5(c), (d)(3). This language makes clear that changes to the formula rate structure and protocols within the update proceedings are prohibited. Staff fails to explain how "adjustments [the ICC] deems appropriate" can be reflected in traditional schedules if the require changes to the template that have to happen in a different docket.

As explained in AIC's initial brief, the Commission's final order should include a populated formula template to avoid confusion and inconsistency. Staff's reliance on ComEd's

first update proceeding (Docket 12-0321) is not dispositive. As the Docket 12-0321 order noted, no calculation alignment issue had been identified in that case between the traditional revenue requirement schedules and the formula rate template. *Commonwealth Edison Co.*, Docket 12-0321, Order, p. 105 (Dec. 19, 2012). Further, in that case, the Commission referenced a new rulemaking that would permit ComEd and other parties to address this issue. To date, the referenced rulemaking has not been initiated.

In sum, competing rate schedules can only lead to confusion and possible inconsistencies. Given the new rate paradigm, rate schedules that are in accord with that paradigm are in order.

2. Preparation of Exhibits, Schedules, and Workpapers in Formula Rate Proceedings

Staff recommends the Commission's order in this proceeding direct AIC to file its future formula rate update filings and responses to discovery in a manner that clearly identifies the source(s) for all information provided that would trace back to other referenced supporting documentation. (Staff Init. Br. 73.) Such a directive is unnecessary. AIC routinely provides Staff with working versions of the Part 285 filings, including all schedules and workpapers, with working formulae intact. (Ameren Ex. 9.0 (Rev.) (Stafford Reb.), p. 58.) In this proceeding, working versions of the Formula Rate Template and related workpapers were also provided to Staff. (*Id.*) These working spreadsheets enable Staff to trace all schedules, workpapers and exhibits back to other documents containing the same information. (*Id.*) In addition, AIC has committed to making certain improvements in its subsequent filings. (AIC Init. Br. 122.) For example, AIC will attempt to ensure that amounts presented on schedules are not rounded when inserted into relevant testimony. AIC will also attempt to improve the pagination of multi-page spreadsheets in future filings. (*Id.*) In light of these commitments, formal Commission action is not needed.

Staff's concerns also do not warrant a specific Commission directive as Staff

recommends because they should be (and typically are) addressed by parties through discovery. Staff's citation to the Commission's Order in Docket 12-0001 highlights this point. In its initial brief, Staff complained it had difficulty with AIC's presentation in prior cases, specifically with Account 909 expenses in Docket 12-0001. (Staff Init. Br. 71.) In that case, Staff proposed a general disallowance of Account 909 expenses "because it has not been able to tie specific invoices to particular advertising expenses that AIC seeks to recover from customers." *Ameren Ill. Co.*, Docket 12-0001, Order, p. 92. However, the problem was not with AIC's presentation. Rather, the Commission stated, "the underlying problem for Staff is one of limited resources to devote to work that must be done under a shortened deadline." *Id.* Regardless of the source of Staff's concerns, the Commission noted that AIC provided the information to Staff in discovery. *Id.* The discovery process has addressed Staff's concerns in this case as well; AIC has responded to over 80 data requests and met with Staff witness Ms. Ebrey to discuss her concerns. (Ameren Ex. 9.0 (Rev.), p. 55.) Thus, the parties and the Commission should rely on discovery as the proper means by which to address the questions that will surely arise in future proceedings.

Finally, AIC notes that if the Commission concludes that findings requiring additionally transparency in exhibits and workpapers are needed, the findings should be made universally applicable to AIC, Staff, and any intervenors in future formula rate proceedings.

VIII. CONCLUSION

For all of the reasons set forth in AIC's initial brief, and above, Ameren Illinois Company d/b/a Ameren Illinois the Commission should adopt the revenue requirement as proposed by Ameren Illinois Company and reflected in Appendices A-C of AIC's initial brief.

Dated: October 11, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on October 11, 2013, I caused a copy of the foregoing *Reply Brief of Ameren Illinois Company* to be served by electronic mail to the individuals on the Commission's Service List for Docket 13-0301.

/s/ Albert D. Sturtevant
Attorney for Ameren Illinois Company